

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION**

RANDY STEVENS, individually and on behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:11-cv-00313-MAC
	)	
AT&T INC., and SOUTHWESTERN BELL	)	
TELEPHONE COMPANY,	)	
	)	
Defendants.	)	

**DECLARATION OF MICHAEL FRIAS IN SUPPORT OF  
DEFENDANTS' MOTION TO COMPEL ARBITRATION**

I, Michael Frias, hereby declare as follows:

1. I am over the age of eighteen and believe in the obligations of an oath.
2. I have personal knowledge of the facts set forth in my declaration, and they are true and accurate to the best of my knowledge and belief. If called as a witness I could and would testify competently as to the truth of the following facts.
3. I am a Senior Product Marketing Manager for AT&T Operations, Inc., an affiliate of defendants. In that capacity, I support the AT&T Internet Services ("AT&T IS") business unit, which provides Internet services to AT&T customers.
4. My job responsibilities include, among other things, customer registration and activation of high-speed Internet service. In that capacity, I am familiar with the provision of high-speed Internet service to residential customers, the terms of service pursuant to which customers receive that service, the process by which new customers accept those terms of service, the process by which the company communicates changes in those terms of service to existing customers, and related company records.

5. Company records show that Mr. Stevens' Internet service was activated on August 3, 2003.

6. I am familiar with the activation process for Internet service at the time Mr. Stevens's account was activated. During the Internet service activation process in use at that time, the customer was presented with a prompt on his home computer screen inviting him to review and accept the terms of service. The activation process did not allow a customer to proceed and activate his Internet service unless he accepted the terms of service by clicking an "I agree" box on his computer screen.

7. A true and correct copy of the terms of service that were in effect on August 3, 2003, which customers were required to accept in order to activate their Internet service, is attached as Exhibit 1 to this declaration.

8. The terms of service in effect on August 3, 2003, stated, among other things, that "[t]hese TOS [terms of service] may be updated from time to time," if AT&T IS "makes a change to these terms that has a material impact on the Service, you will be provided notice of that change," and "[y]our continued use of the Service following such notice constitutes your acceptance of those changes." Exhibit 1, Section 1.

9. In early September of 2008, AT&T IS sent customers an email notifying them of changes to the terms of service that would take effect in late October of 2008, and providing a link to the full text of the new terms. According to company records, this notification email was sent to the email address registered for Mr. Stevens' account (stevensrandy@sbcglobal.net). A true and correct copy of the form e-mail notification is attached as Exhibit 2 hereto. The email notification stated, among other things: "By continuing to use the Service, you signify your continued agreement to the terms and conditions set forth in the Terms of Service document."

Ex. 2, page 2. A true and correct copy of the terms of service that became effective in October of 2008 is attached hereto as Exhibit 3.

10. In April of 2009, AT&T IS made minor changes to the terms of service. A true and correct copy of these terms of service, which were in effect through March of 2011, is attached as Exhibit 4.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 31, 2011, at Austin, Texas.

  
Michael Frias

# **Exhibit 1**

## 1. MEMBERSHIP AGREEMENT

The following Terms of Service (referred to as "TOS" or "Member Agreement"), between you, the SBC Internet Services company providing your Internet Access Service (Ameritech Interactive Media Services, Inc., Pacific Bell Internet Services, SNET Diversified Group, Inc., Southwestern Bell Internet Services, Inc., or Prodigy Communication L.P.) (collectively referred to as "SBC Internet Services" or "SBC") and Yahoo! Inc. (collectively referred to as "SBC Yahoo!"), constitute a legal document that details your rights and obligations as a member of SBC Yahoo! Dial or SBC Yahoo! DSL (each referred to as the "Service"). (SBC Yahoo! DSL is an information service provided by SBC and Yahoo! that combines DSL with Internet access to provide the customer with high-speed broadband access to the World Wide Web.)

Please review these TOS and click "I AGREE" if you agree to be bound by the terms and conditions set forth in this document. If you do not agree, click "I DO NOT AGREE" and do not use the Service.

Must be 18. You cannot become a member without accepting these TOS. You must be an adult of at least 18 years of age and a natural person (i.e. not a corporation or other business entity) to enroll in the Service as a member. By accepting these TOS, you confirm you are a natural person and an adult of at least 18 years of age.

Updates. These TOS may be updated from time to time and you can review the most current version at any time at: <http://sbc.yahoo.com/terms>. If SBC Yahoo! makes a change to these terms that has a material impact on the Service, you will be provided notice of that change. Your continued use of the Service following such notice constitutes your acceptance of those changes. Please note, these TOS apply to you whether you pay a service fee directly to SBC Yahoo! or you receive the Service as part of an agreement between you and a third-party authorized to distribute or resell all or a portion of the Service.

Membership. When you accept these TOS and complete the registration process to become a member of the SBC Yahoo! Service, you become the "Member Account" holder. You may create up to ten "sub-accounts" (each of which will have a separate password and Member ID) for members of your household. As the Member Account holder, you are responsible for all activity on your Member Account and on any of the sub-accounts. Violations of these TOS in a Member Account or in a sub-account can result in termination of the Member Account and all associated sub-accounts.

Additional Terms. When using particular services on the SBC Yahoo! Site, including certain premium services, you will be subject to posted guidelines or additional terms applicable to those services. In addition, certain services offered by Yahoo!, such as Bill Pay, Yahoo! Store and Yahoo! Site, are governed by additional agreements.

## 2. DESCRIPTION OF SERVICE

Description. The Service includes a rich collection of resources provided by SBC and Yahoo! (referred to collectively as "SBC Yahoo!"), including various communications tools, forums, shopping services, personalized content and branded programming that Yahoo! provides through its network of properties, and SBC's broadband and narrowband Internet Access Service for retail consumers. Included with your basic membership fee you receive certain premium services (some of which you select during registration) and content.

Registration Discounts. Your Service may also include discounts on premium services not included with your basic membership fee. Those discounts must be used within one year from registration for the

Service and can only be used by the Member Account and not by any of the sub-accounts. If you do not use the discounts within one year, you will not receive a rebate, credit or refund of the value of such discounts. Such discounts are only for premium services properly ordered from the discount order page and cannot be applied to any premium services not ordered through that page, including premium services purchased or ordered prior to registration for the Service. The list premium services for which a discount is available may be changed from time to time. If such a discount is for a premium service that is delivered on a subscription basis, the discount will only be applied for the continuous time specified. All discounts terminate upon the termination or cancellation of the Service and are non-transferable. SBC Yahoo! will not alert you when the discount terminates or expires.

User Discretion Advised. Please be aware that there may be certain areas on the Service that are designated for persons over 18 years of age. Care should be taken to prevent access by members of your household who are under that age.

### 3. CONNECTION TO SBC YAHOO! DIAL OR SBC YAHOO! DSL

Equipment & Software. Other than all software and hardware provided to you by SBC Yahoo! and any revised version thereof that you choose to use, you must provide all equipment, devices and software necessary to receive the Service. Due to the infinite number of possible combinations of hardware and software, you are responsible for the compatibility of your system with the Service.

Toll Charges. SBC will provide telephone numbers to connect to or register for the Service. Depending on location, local access numbers may not be available in your area. Even access numbers in your area code may result in toll, usage, or long distance charges. Please check with your local phone company to determine whether additional charges may apply. You are responsible for selecting the best number for you, and for all telephone fees and charges associated with the use of the telephone number you select. In no event will SBC or Yahoo! be responsible for any telephone fees or charges incurred as a result of the telephone number you select. Use of the Service (or portions thereof), and of specific telephone numbers, is subject to change or interruption at the telecommunication company's discretion.

Operational Limits. Provisioning of Service is subject to the availability and the operational limitations of the requisite equipment and associated facilities.

Speed. If the Service you have purchased is provided within a range of speeds between the Network Interface Device at your home and your local telecommunication company's Central Office, the Service will be provided at least at the lowest speed within the range. If the Service can not be provided at the lowest speed in the range, the Service will be discontinued without a termination charge to you. You will not receive a refund or rebate for the period of service prior to the speed reduction below the low end of the speed range. There is no guarantee or warranty that the Service will perform at the upper end of the speed range, nor is that a guarantee or warrant that actual throughput from the Internet to your computer will be at or above the low end of the speed range.

Concurrent Use. No more than one dial-up connection is permitted to your membership at the same time. Members who receive the Service as part of a DSL Internet Access Service account may, however, have a concurrent DSL and dial-up connection.

DSL-Specific Terms. If your Service includes SBC's DSL Internet Access Service, the following terms apply to you:

(a) DSL, or digital subscriber line, means Asymmetrical Digital Subscriber Line ("ADSL"), Symmetrical Digital Subscriber Line ("SDSL") or ISDN Digital Subscriber Line ("IDSL") (collectively,

"DSL"), depending on the particular service ordered by you at the time you placed your order for the Service.

(b) Commencing on the date on which the Service is installed, you will have use of the Service pursuant to the terms and conditions set forth herein. In exchange, you will pay the current charges for such Service and equipment, including installation charges and shipping and handling charges (if applicable) upon commencement of billing. Billing will begin when we have activated your DSL on our network whether or not you have completed self-installation or actually have used the DSL.

(c) Basic ADSL Internet Access Service, as applicable, is a single IP Service intended for use with a single Member Account. You may not use the Service in a manner that is inconsistent with this intended use. SBC Yahoo! will not provide support for the installation or ongoing management of a customer premise router with your Basic DSL Internet Access Service. Primary and secondary domain name service is not provided as part of the Basic DSL Internet Access Service.

(d) Enhanced ADSL Internet Access Service, SDSL and IDSL Internet Access Service, as applicable, are multi-IP services (5 useable IP addresses) intended for use with single or multi-stations. You may not use any Service in a manner that is inconsistent with this intended use. SBC Yahoo! is not responsible for providing assistance in the configuration of your LAN and will not support the installation or ongoing management of a customer premise router with your Enhanced ADSL Internet Access service, your SDSL Internet Access Service or your IDSL Internet Access Service.

(e) You will provide SBC and its subcontractors reasonable access to your premises in order to install, maintain and repair the Service. You will be responsible for payment of service charges for visits by SBC or its subcontractors to your premises when a service request results from causes not attributable to SBC or its subcontractors.

#### 4. YOUR REGISTRATION OBLIGATIONS

All information that you provide to SBC Yahoo! must be accurate, including your name, address, credit or charge card numbers and expiration dates and any Service payment information ("Registration Data"). You are responsible for keeping such information up to date and must provide changes promptly to SBC by clicking on the My Account link from <http://support.sbcglobal.net/> and to Yahoo! at <http://sbc.yahoo.com/account>.

Certain premium services require a Yahoo! Wallet. If you do not yet have a Yahoo! Wallet, you will be prompted to complete the registration process before you can be provided those premium services.

#### 5. CHILDREN

Adult Supervision. SBC Yahoo! is concerned about the safety and privacy of all its users, particularly minors and children. For this reason, children under the age of 13 will not be permitted to access the Service unless added to a Member Account by their legal guardian. When you add your child to your Member Account, you certify that you are at least 18 years old and that you are the legal guardian of child/children you wish to add to your Member Account. By adding a child to your Member Account, you give your child permission to access all services accessible through the Service by children under 13 with parental consent including, email, message boards, clubs, and instant messages (among others). Please remember that the Service is designed to appeal to a broad audience. Accordingly, as the legal guardian, it is your responsibility to determine whether any of the services and/or Content (as defined below) provided through the Service are appropriate for a minor. Minors who access the Service are assumed to have parental or guardian consent before accessing the Service.



**Access Controls.** SBC Yahoo! suggests that you take advantage of the access controls offered through the Service, which allow you, as the Member Account holder, to block access by either your Member Account or your sub-accounts to certain types of web content you may feel are inappropriate for minors. However, SBC Yahoo! also recommend that you remain diligent in your supervision of any minors in their use of the Service and the Internet. Access controls provided through the Service are intended as a guide only. Neither SBC Yahoo! nor their licensors can be responsible for any content accessed by you or minors, whether or not you take advantage of the access controls provided through the Service. In addition, neither SBC Yahoo! nor their licensors guarantee the accuracy of such access controls, and will not be liable for any loss or damage of any kind incurred as a result of the use of such access controls.

**Communications with Strangers.** If you allow minors to access SBC Yahoo! features, please remind them of the dangers involved when corresponding or communicating with strangers or new acquaintances on the Internet (especially in Chat and Newsgroup rooms, as well as when using email). It may also be wise to carefully note all Internet pen pals with whom minors frequently correspond.

## 6. SBC AND YAHOO! PRIVACY POLICIES

Registration Data and certain other information about you is subject to the SBC and Yahoo! Privacy Policies. For more information, see <http://sbc.yahoo.com/privacy>.

## 7. MEMBER ACCOUNT, PASSWORD AND SECURITY AND HACKING / SHARED SERVICE

**Member Duty.** You will receive a password and Member ID upon completing the Service registration process. You agree to keep confidential all passwords, IP addresses, and computer names, and are solely responsible for any liability or damages resulting from your failure to maintain that confidentiality. You are also solely and fully responsible and liable for all activities that occur under your password or Member ID. You agree to (a) immediately notify SBC and Yahoo! if you suspect any breach of security, such as loss, theft, or unauthorized disclosure or use of your Member Account or sub-account, password, Member ID, or any credit or charge card number provided to SBC Yahoo! by calling 1-866-SBC-DIAL (1-866-722-3425) for SBC Yahoo! Dial subscribers or 1-877-SBC-DSL5 (1-877-722-3755) for SBC Yahoo! DSL subscribers, and (b) ensure that you exit from your account at the end of each session.

**Member Responsibility.** You are responsible for all use of the Service under the membership and for all fees and charges associated with or incurred under the membership, whether by the Member Account or sub-accounts.

**Assumption of Risk.** There is a risk that other users may attempt to hack into your computer. You acknowledge this risk as inherent to the shared nature of the Service and you agree to take full responsibility for taking adequate security precautions and backing up any data.

## 8. FEES

**Agreement to Pay.** You agree to pay all fees and charges specified when you ordered your Service, including recurring and nonrecurring charges for the Service, the associated equipment, and installation.

**Late Payment.** Except for the first month's recurring charge, the installation charge and the charges for equipment (including shipping, handling and taxes), which are billed after service commences, monthly recurring charges are billed in advance of Service. If any portion of payment is received after the late



payment date, a monthly late charge may be charged to you. The monthly late charge will be the lower of: (i) 1.5%; or (ii) the highest amount allowed by law, applied to the entire outstanding balance for each month or portion thereof for which the balance remains.

**Failure to Pay.** In the event you fail to pay charges, or your SBC Telephone Company is unable to bill you, SBC reserves the right to bill outstanding sums to your credit card or to bill you directly. SBC may assign unpaid late balances to a collection agency for appropriate action. In the event legal action is necessary to collect on balances due, you agree to reimburse SBC for all expenses incurred to recover sums due, including attorneys' fees and other legal expenses.

**Method of Payment.** Your basic membership fees maybe billed to your telephone number or charged to a charge or credit card, or your Yahoo! Wallet. Additional fee services that are not included with your basic membership fee will be charged by Yahoo! to your charge or credit card, or Yahoo! Wallet. By authorizing SBC or Yahoo! to charge a credit or charge card, your Yahoo! Wallet, or bill charges to your telephone number, you are authorizing SBC, Yahoo! or their respective designated representatives or agents to automatically continue charging that card (or any replacement credit card account if the original card is renewed, lost, stolen, or changed for any reason by the credit-issuing entity, and such entity informs SBC or Yahoo! of such new replacement card account) or telephone number for all fees and charges associated with your membership.

**Changing Method of Payment.** If you bill your charges to your telephone number, you may receive a special or discounted price for the Service. Changing your method of payment may cause the price of your Service to increase. Please read the terms of the offer under which you enrolled or call Customer Care at 1-866-SBC-DIAL (1-866-722-3425) for SBC Yahoo! Dial subscribers or 1-877-SBC-DSL5 (1-877-722-3755) for SBC Yahoo! DSL subscribers before you change your method of payment.

**Fees & Charges.** SBC Yahoo! may, upon notice required by applicable laws, at any time change the amount of, or basis for determining, any fee or charge, or institute new fees or charges. These new fees or charges will be implemented, in the case of a month-to-month member, at the commencement of the next billing cycle after the change is effective, or in the case of a term member, at the end of the term. You will be charged by Yahoo! for any premium services or extra fee features you subscribe to or use during that period's billing cycle. All fees and charges are payable in accordance with billing terms in effect at the time the fee or charge becomes payable. Unless otherwise stated, all amounts are in U.S. Dollars.

**Bill Inquiries.** If you believe you have been billed in error for any aspect of the Service, please notify us within 60 days of the billing date by contacting Customer Service about the error. Customer Service can be reached at 1-866-SBC-DIAL (1-866-722-3425) for SBC Yahoo! Dial subscribers or 1-877-SBC-DSL5 (1-877-722-3755) for SBC Yahoo! DSL subscribers. SBC Yahoo! will not issue refunds after the expiration of this 60-day period.

**Refunds.** Charges for premium services or extra fee features not included with your basic membership fee, supplemental access charges and phone company charges cannot be refunded at any time.

**Cancellation.** A member who enrolls in a pre-paid annual membership plan may cancel his or her membership, but will only be entitled to a refund as, and if, permitted under the terms and conditions of that plan. If you enrolled in a commitment term plan with SBC Yahoo!, you may cancel your plan before the end of your commitment term, but you may be subject to early cancellation penalties and/or service fees associated with that plan.

**Free Trials.** If you are a member who has enrolled in the Service as part of a "FREE" trial offer, please

note that unless otherwise indicated by the specific offer, your free trial time must be used within one month of your enrollment. To avoid being charged for additional service, members must cancel their membership before the end of that first month by calling the telephone number provided with the offer or 1-866-SBC-DIAL (1-866-722-3425) for SBC Yahoo! Dial subscribers or 1-877-SBC-DSL5 (1-877-722-3755) for SBC Yahoo! DSL subscribers.

**Global Service Provider.** Your connection from the Service into and across the Internet may be provided by a Global Service Provider (GSP), depending on where you have service. Where a GSP is required, the GSP sets the price for the GSP Service, and establishes the terms and conditions for use of the GSP Service. The GSP's charges are included in the basic membership fee, but will appear as a separate line item on your bill. The GSP is not affiliated with SBC or Yahoo!. Your GSP is UUNET, Digex Inc., IBM, Sprint, or COVAD Communications, depending on where you have service.

**Basic Telephone Service.** Your basic telephone services -- such as Measured Business service or Residential service -- will not be disconnected for nonpayment of charges for SBC Yahoo! Service. However, SBC Yahoo! may suspend or discontinue the SBC Yahoo! Service if charges are not paid.

**Telecommunication Charges.** You are responsible for purchase and payment of network services (transport) needed for use of the Service. Any long distance, measured service or toll charges incurred by you to dial into the Service during your use of the Service will be your sole responsibility.

## 9. MEMBER CONDUCT

You agree that you will NOT use the Service to:

- (a) upload, post, email, transmit or otherwise make available any Content (defined below) that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
- (b) harm minors in any way;
- (c) impersonate any person or entity, including, but not limited to, an SBC or Yahoo! official, forum leader, guide or host, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- (d) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;
- (e) upload, post, email, transmit or otherwise make available any Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- (f) upload, post, email, transmit or otherwise make available any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights ("Rights") of any party;
- (g) upload, post, email, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation, except in those areas (such as shopping rooms) that are designated for such purpose;
- (h) upload, post, email, transmit or otherwise make available any material that contains software viruses

or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

(i) disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other users of the Service are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges;

(j) interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service;

(k) intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;

(l) "stalk" or otherwise harass another; or

(m) collect or store personal data about other users.

**Attempts to Break Security.** You understand and agree that any attempt to break security, or to access an account which does not belong to you, will be considered a material breach of these TOS, and such breach may result in suspension or termination of the Service, and possibly referral to law enforcement authorities. Unauthorized access to the Service, to restricted portions of the Service, or to the telecommunications or computer facilities used to deliver the Service, is a breach of these TOS and a violation of law.

**Acceptable Use Policy.** Violations of SBC's Acceptable Use Policy ("AUP") may also be considered a material breach of these TOS and may also result in suspension or termination of the Service. SBC's AUP may be reviewed at <http://www.sbcglobal.net/aup>.

## 10. SPECIAL ADMONITIONS FOR INTERNATIONAL USE

Recognizing the global nature of the Internet, you agree to comply with all local rules regarding online conduct and acceptable Content. Specifically, you agree to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which you reside.

## 11. CONTENT SUBMITTED OR MADE AVAILABLE FOR INCLUSION ON THE SERVICE

**Assumption of Risk.** You understand that all information, data, text, software, music, sound, photographs, graphics, video, messages or other materials ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from which such Content originated. This means that you, and not SBC Yahoo!, are entirely responsible for all Content that you upload, post, email, transmit or otherwise make available via the Service. Neither SBC nor Yahoo! control the Content posted via the Service and do not guarantee the accuracy, integrity or quality of such Content. You understand that by using the Service, you may be exposed to Content that is offensive, indecent or objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content. You acknowledge that you may not rely on any Content submitted to SBC or Yahoo! including, without limitation, information in SBC Yahoo! Message Boards, Yahoo! Clubs, and in all other parts of the Service.

**Limitation of Liability.** Under no circumstances will either SBC or Yahoo! be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the Service.

**Removal of Content.** You acknowledge that neither SBC nor Yahoo! pre-screens Content, but that they or their designees will have the right (but not the obligation) in their sole discretion to refuse or move any Content that is available via the Service. Without limiting the foregoing, SBC and Yahoo! will have the right to remove any Content that violates these TOS or is otherwise objectionable.

**Preservation of Content.** You acknowledge and agree that SBC Yahoo! may preserve Content and may also disclose Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce these TOS; (c) respond to claims that any Content violates the rights of third-parties; or (d) protect the rights, property, or personal safety of SBC Yahoo!, its users and the public.

**Changes to Content.** You understand that the technical processing and transmission of the Service, including your Content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

**Grant of License.** SBC Yahoo! does not claim ownership of Content you submit or make available for inclusion on the Service. However, with respect to Content you submit or make available for inclusion on publicly accessible areas of the Service, you grant SBC and Yahoo! the following world-wide, royalty free and non-exclusive license(s), as applicable:

(a) With respect to Content you submit or make available for inclusion on publicly accessible areas of Yahoo! Clubs and Yahoo! Groups, the license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Service solely for the purposes of providing and promoting the specific Yahoo! Club or Yahoo! Group to which such Content was submitted or made available. This license exists only for as long as you elect to continue to include such Content on the Service and will terminate at the time you remove or Yahoo! removes such Content from the Service.

(b) With respect to photos, graphics, audio or video you submit or make available for inclusion on publicly accessible area of the Service other than Yahoo! Clubs or Yahoo! Groups, the license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Service solely for the purpose for which such Content was submitted or made available. This license exists only for as long as you elect to continue to include such Content on the Service and will terminate at the time you remove or Yahoo! removes such Content from the Service.

(c) With respect to Content other than photos, graphics, audio or video you submit or make available for inclusion on publicly accessible areas of the Service other than Yahoo! Clubs or Yahoo! Groups, the perpetual, irrevocable and fully sub-licensable license to use, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display such Content (in whole or in part) and to incorporate such Content into other works in any format or medium now known or later developed.

**Publicly Accessible Areas.** "Publicly accessible" areas are those areas of the Service that are intended by SBC Yahoo! to be available to the general public. By way of example, publicly accessible areas of the Service would include Yahoo! Message Boards and portions of Yahoo! Clubs and Yahoo! Groups that are open to both members and visitors. However, publicly accessible areas of the Service would not include portions of Yahoo! Clubs and Yahoo! Groups that are limited to members, Yahoo! services intended for private communication such as Yahoo! Mail or Yahoo! Messenger, or areas off of the

Service.

## 12. INDEMNITY

You agree to indemnify and hold Yahoo!, SBC and their subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Content you submit, post, transmit or make available through the Service, your use of the Service, your connection to the Service, your violation of these TOS, your violation of the AUP, or your violation of any rights of another.

## 13. NO RESALE OF SERVICE

**Non-Commercial Use.** The Service is provided for your personal, non-commercial use only (unless otherwise specifically stated) and you agree not to reproduce, duplicate, copy, sell, transfer, resell or exploit for any commercial purposes, your membership in the Service, any portion of the Service, use of the Service, or access to the Service. All aspects of the Service, except that portion provided by third party providers, is copyrighted and property of SBC Yahoo!. The Service is intended for access to and use of electronic mail, Usenet newsgroups, Internet relay chat, the Internet and any other proprietary or non-proprietary services that SBC Yahoo! makes available to its members. Unless your account was provisioned with a single static IP address prior to May 1, 2001, you will not use the Service to operate server programs, including, but not limited to mail servers, IRC servers, FTP servers, or Web servers.

**Household Use.** You agree not to permit anyone else to use your Member Account and that each sub-account may only be used by one member of your household.

## 14. GENERAL PRACTICES REGARDING USE AND STORAGE

**Community.** SBC Yahoo! provide the Service to you as an individual as well as to the community of Service members. In order to provide an accessible network for all, members are expected to act as part of that community. High levels of activity on the Service reflect uses not in keeping with community objectives. Inappropriate uses of the Service include but are not limited to: the use of the Service on an inactive basis, that is, keeping your account active and online with SBC's network without your actual interaction with or use of the Web browsing, interactive features, or email services provided by or through SBC Yahoo!; continuous and sustained excessive account activity; and, the use of methods or automated programs to defeat systems that limit inactivity. Due to violations of community objectives through such or other inappropriate uses, the Company may do one or all of the following: seek a clarification of your activity patterns; automatically disconnect your session for such violations or for a period of inactivity, which period will be within SBC Yahoo!'s sole discretion; or, cancel your account.

**General Practices & Limits.** You also acknowledge that SBC Yahoo! may establish general practices and limits concerning use of the Service, including without limitation the maximum number of days that email messages, message board postings or other uploaded Content will be retained by the Service, the maximum number of email messages that may be sent from or received by an account on the Service, the maximum size of any email message that may be sent from or received by an account on the Service, the maximum disk space that will be allotted on Yahoo!'s servers on your behalf, and the maximum number of times (and the maximum duration for which) you may access the Service in a given period of time. You agree that neither SBC nor Yahoo! have responsibility or liability for the deletion, failure to store or to deliver any messages and other communications or other Content maintained or transmitted by the Service. You acknowledge that SBC Yahoo! reserves the right to log off accounts that are, or disconnect a session that is, inactive for an extended period of time. You further acknowledge that SBC and Yahoo! reserve the right to change these general practices and limits at any time without advanced



notice.

Unsolicited Email. You are expressly prohibited from sending the same or substantially similar unsolicited electronic mail message, whether commercial or not, to twenty-five or more recipients, and from posting to a newsgroup, bulletin board, or message board, the same or substantially similar unsolicited note, whether commercial or not, ten or more times per day through the use of the Service, SBC Yahoo!'s equipment, or in connection with any SBC Yahoo! e-mail address, SBC Yahoo! domain name, or any SBC Yahoo! trademark or service mark. For each day that this provision is violated, SBC Yahoo! may assess a charge of \$50.00 per day for unintentional violations and \$500.00 per day for deliberate or repeated violations. Neither SBC Yahoo!'s demand, nor payment of these charges, will prevent SBC Yahoo! from terminating your Member Account (or any sub-account connected to your Member Account), or pursuing other legal remedies SBC Yahoo! may have at law or in equity, including without limitation a lawsuit for monetary damages or an injunction. SBC Yahoo! will not be liable for its failure to enforce this restriction. Further, failure to enforce this restriction in one or more instances will not constitute a waiver of any or all of SBC Yahoo!'s rights to enforce this restriction with respect to subsequent violations.

## 15. MODIFICATIONS TO SERVICE

SBC Yahoo! reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. You agree that neither SBC nor Yahoo! will be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

## 16. TERM AND TERMINATION

Termination for Cause. SBC Yahoo! may immediately terminate all or a portion of your membership, or suspend any or all individual member's access to all or a portion of the Service, without notice, for conduct that SBC and Yahoo! believe is illegal, fraudulent, harassing or abusive, a violation of these TOS, or any policies or guidelines posted by SBC Yahoo! on the Service (including the AUP), or for other conduct that SBC Yahoo! believe harmful to other Users, members, to third parties, including but not limited to third party providers, to the Service or the business interests of SBC Yahoo!. If SBC Yahoo! has terminated a portion but not all of your access to the Service for the foregoing reasons, you will nevertheless be responsible for the all charges for the Service. Use of a membership for illegal, fraudulent or abusive purposes may be referred to law enforcement authorities without notice to the member. If you file a claim against SBC Yahoo!, or a claim which in any way involves SBC Yahoo!, then SBC Yahoo! may terminate your membership. Upon termination of your membership by SBC Yahoo! for any reason, you will not establish a new membership in any SBC or Yahoo! Internet or Internet Access Service for five years from the date of termination. Upon termination of your membership, SBC Yahoo! will have no obligation to notify any third parties nor will SBC and Yahoo! be responsible for any damages that may result or arise out of termination of your membership. Termination or suspension by SBC Yahoo! of service to a member also constitutes termination or suspension (as applicable) of that member's license to use the Software.

Retention. SBC Yahoo! has no responsibility for retaining or delivering private emails that are located in a member's email inbox at the time of that member's suspension or termination, or that are addressed to such member thereafter.

Third Party Termination. If you have obtained the Service from a third party, your right to use the Service may be cancelled or suspended by such third party without notice from SBC Yahoo!. If you receive the Service as part of consolidated billing plan, the consolidated billing account owner may

terminate your use of the Service and may access or reassign such account, including any stored email thereon, to another member.

**Use Limitation.** SBC Yahoo! reserves the right to suspend or terminate the Service to you, or to suspend or terminate any Member ID, electronic mail address, Universal Resource Locator or domain name used by you, in the event it is used in a manner which (i) constitutes violation of any law, regulation or tariff (including, without limitation, copyright and intellectual property laws); (ii) is defamatory, fraudulent, obscene or deceptive; (iii) is intended to threaten, harass or intimidate; (iv) tends to damage the name or reputation of SBC, Yahoo!, their parent, affiliates and subsidiaries; or (v) interferes with other members' use and enjoyment of the Services provided by SBC and Yahoo!.

**Access to Yahoo! after Termination.** If you have elected to merge your Yahoo! account with your Member Account or a sub-account you cannot later undo this process.

If you wish to continue to access a Yahoo! account that has been merged with a Member Account (including the associated email and personalized information) through a different Internet access provider after your Service is terminated or cancelled, Yahoo! may (but reserves the right not to) offer you the option to either create a new Yahoo! ID or to pay to Yahoo! \$9.95 per month (which does not include the cost of providing Internet access). Your use of your Yahoo! account after that time will be subject to the Yahoo! Terms of Service at <http://docs.yahoo.com/info/terms/>. Otherwise your Member Account, sub-accounts and all associated content, emails and personalizations will be deleted or destroyed 90 days after your Service has been cancelled or terminated.

**Event Termination.** In the event a ruling, regulation or order issued by a judicial, legislative or regulatory body causes SBC Yahoo! to believe that these TOS and/or the Service provided hereunder, may be in conflict with such rules, regulations and orders, SBC Yahoo! may suspend or terminate the Service, or terminate these TOS, without liability. In the event an SBC Yahoo! sub-contractor for the Service stops providing the Service (or any element thereof) to SBC Yahoo! for any reason, SBC Yahoo! will have forty-five calendar days to arrange for a reasonably comparable service. If SBC Yahoo! cannot arrange for reasonably comparable Service either you, SBC Yahoo! may thereafter terminate these TOS without liability.

**Termination for Default.** If you fail to pay any charge when due, including, but not limited to, installation charges or taxes, or if you provide false or inaccurate information which is required for the provision of the Service or is necessary to allow SBC Yahoo! to bill you for the Service, and such condition continues un-remedied for thirty days, you will be in default and SBC Yahoo! may suspend or terminate the Service to you.

**Termination for Convenience.** In the event that you choose to terminate the Service, you agree that the monthly charge for the month in which Service is terminated will be forfeit as a Cancellation Charge. In the event of early cancellation of a one year Term Service commitment, you agree to pay an additional Cancellation Charge as follows:

(a) \$200 for ADSL, SDSL and IDSL Internet Access customers.

(b) If you purchase Service together with an equipment promotion, additional termination charges will apply.

**Contacts to Terminate Service:**

For SBC Yahoo! Dial subscribers: 1-866-SBC-DIAL (1-866-722-3425)



For SBC Yahoo! DSL subscribers: 1-877-SBC-DSL5 (1-877-722-3755)

Termination Due to Loss of Line Sharing. The following terms apply to SBC Yahoo! DSL Internet Access Service:

(a) DSL Transport Provided by SBC affiliate. Service is offered by SBC Yahoo! DSL Transport Services using a line sharing arrangement over a retail telephone line provided by an SBC Telephone Company (i.e., Southern New England Telephone, Pacific Bell Telephone, Nevada Bell Telephone, Southwestern Bell Telephone, or Ameritech Telephone). If you change your provider of telephone service on the line that is used to provide the Service, or you terminate the telephone line, and an SBC Telephone Company is no longer providing your telephone service, DSL Transport Services will no longer be able to be provide on a line shared basis and the Service will be disconnected. In such event, TOS will automatically terminate and any applicable termination charges will apply.

(b) DSL Transport Provided by Other Carriers. Some xDSL Service sold to you by SBC Yahoo! may be provided by other companies. In such event, SBC and Yahoo! remain responsible for providing the Service to you. If you change your provider of telephone service so that an SBC Telephone Company is no longer providing you any service, these TOS for SDSL or IDSL Service will terminate at SBC Yahoo!'s option and termination charges will apply.

## 17. DEALINGS WITH ADVERTISERS AND THIRD PARTIES

Advertising. You also understand and agree that the Service may include advertisements and that these advertisements are necessary for SBC Yahoo! to provide the Service.

Dealings with Advertisers. Your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Service, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such advertiser. You agree that SBC Yahoo! will not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers on the Service.

Third Parties. If you are receiving Service as part of an agreement between you and a third-party whom SBC Yahoo! has authorized to distribute or resell all or a portion of the Service, SBC Yahoo! is not responsible for, or bound by, the terms of any agreement you may have with that third-party.

## 18. LINKS

The Service may provide, or third parties may provide, links to other World Wide Web sites or resources. Because SBC Yahoo! have no control over such sites and resources, you acknowledge and agree that neither SBC nor Yahoo! is responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any Content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that neither SBC nor Yahoo! will be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content, goods or services available on or through any such site or resource.

## 19. SBC YAHOO!'S PROPRIETARY RIGHTS

No Conveyance. Nothing contained in these TOS may be construed to convey to you any interest, title, or license in the Member ID, email address, Universal Resource Locator, IP Address, or domain name

used by you in connection with the Service.

**Acknowledgment of Third-Party Rights.** You acknowledge and agree that the Software contains proprietary and confidential information that is protected by applicable intellectual property and other laws. You further acknowledge and agree that Content contained in sponsor advertisements or information presented to you through the Service or advertisers is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly authorized by SBC, Yahoo! or advertisers, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Service or the Software, in whole or in part.

## 20. SOFTWARE

**End User License Agreement.** If you have connected to the Service by downloading or installing SBC Yahoo!'s Internet Software, your use of that Software is subject to the End User License Agreement that accompanied that Software. Otherwise, SBC Yahoo! grants you a personal, non-transferable and non-exclusive right and license to use the object code of its Software on a single computer; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software. You agree not to modify the Software in any manner or form, or to use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the Service. You agree not to access the Service by any means other than through the interface that is provided by SBC Yahoo! for use in accessing the Service.

**Other Hardware and Software.** SBC Yahoo! is not responsible in any way for any computer programs or devices intended for use in connection with the Software, the Service or the Internet, even if such programs or devices are advertised or made available through the Service.

**Export Limits.** None of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported (a) into (or to a national or resident of) any country to which the United States has embargoed goods; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the Software, you are agreeing to the foregoing and you are representing and warranting that you are not located in, under the control of, or a national or resident of any such country or on any such list. The Software and any underlying technology may not be exported outside the United States or to any foreign entity or "foreign person" as defined by U.S. government regulations, including without limitation, anyone who is not a citizen, national or lawful permanent resident of the United States. By downloading or using the Software, you are agreeing to the foregoing and you are warranting that you are not a "foreign person" or under the control of a foreign person.

**Restricted Rights.** The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraphs (a) through (d) of the Commercial Computer Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause of DFARS and in similar clauses in the NASA FAR Supplement.

## 21. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

(a) YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. SBC YAHOO! EXPRESSLY DISCLAIM ALL

WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

(b) SBC YAHOO! MAKES NO WARRANTY THAT (i) THE SERVICE WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE (FOR EXAMPLE, BUT WITHOUT LIMITATION, SBC YAHOO! DOES NOT WARRANT THAT YOU WILL ALWAYS RECEIVE EMAILS ADDRESSED TO YOU), (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS, AND (v) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.

(c) ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

(d) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM YAHOO! OR THROUGH OR FROM THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TOS.

## 22. LIMITATION OF LIABILITY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT NEITHER SBC NOR YAHOO! WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF SBC OR YAHOO! HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a) THE USE OR THE INABILITY TO USE THE SERVICE; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; (e) FAILURE TO INSURE THE COMPATIBILITY OF YOUR SYSTEM (I.E., THE EQUIPMENT, DEVICES, AND SOFTWARE THAT YOU PROVIDE TO RECEIVE THE SERVICE) WITH THE SERVICE, OR (f) ANY OTHER MATTER RELATING TO THE SERVICE.

YOUR SOLE REMEDY AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH SBC OR YAHOO! IN CONNECTION WITH THE SERVICE IS THE CANCELLATION OF YOUR MEMBERSHIP AS PROVIDED IN THESE TOS.

## 23. EXCLUSIONS AND LIMITATIONS

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF SECTIONS 21 AND 22 MAY NOT APPLY TO YOU.

## 24. SPECIAL ADMONITION FOR SERVICES RELATING TO FINANCIAL MATTERS

If you intend to create or join any service, receive or request any news, messages, alerts or other information from the Service concerning companies, stock quotes, investments or securities, please read the above Sections 21 and 22 again. In addition, for this type of information particularly, the phrase "Let the investor beware" is apt. The Service is provided for informational purposes only, and no Content included in the Service is intended for trading or investing purposes. SBC Yahoo! and its licensors will not be responsible or liable for the accuracy, usefulness or availability of any information transmitted or made available via the Service, and will not be responsible or liable for any trading or investment decisions made based on such information.

## 25. NOTICE

Notices to you may be made via either email or regular mail. The Service may also provide notices of changes to these TOS or other matters by sending email, displaying notices or links to notices to you generally on the Service, or by posting material on <http://sbc.yahoo.com>.

Notices by members to SBC and Yahoo! must be given by calling: for SBC Yahoo! Dial subscribers: 1-866-SBC-DIAL (1-866-722-3425), and for SBC Yahoo! DSL subscribers: 1-877-SBC-DSL5 (1-877-722-3755); LEGAL NOTICES or by letter delivered by first class US mail to SBC Yahoo! PO Box 204089, Austin, Texas 78720-4089.

## 26. TRADEMARK INFORMATION

The Yahoo!, Yahoo! logo, Yahoo! (in Chinese Characters), Yahoo!igans!, the Yahoo!igans! Logo, Jumpin' "Y" Guy logo, Do You Yahoo!?, Y!, Y! logo, My Yahoo!, Y! and Star logo, Yahoo! Yodel, Yahoo! Everywhere, Yahoo! Groups, Yahoo! Mail Outpost, Yahoo! Vision, Eyeballs logo, 12 Days of Giving, 1800MYAHOO, Ahead of the Game, Broadband-in-a-Box, Broadcast.com, Camp Yahoo!, Corporate Yahoo!, eGroups, Fantasy Careers, FinanceVision, Fortified With Yahoo!, Four11, GameProwler, GameProwler logo, GeoCities, GeoCities logo, GeoCities (in Chinese Characters), Get Local, Hope for the Holidays, IMVironments, JT's Blocks, LivingRoomActive, MatchCast, Naval Command, Onelist, Permission Marketing, Rocketmail, SpamGuard, The Big Picture, Valuelab, Viaweb, Vivasmart, Web Corps, the Web Corps logo, Word Racer, Wordaholic, and "Your Home on the Web" trademarks and service marks, and other Yahoo! logos and product and service names are trademarks of Yahoo! Inc. (the "Yahoo! Marks"). Without Yahoo!'s prior permission, you agree not to display or use in any manner, the Yahoo! Marks.

SBC and the SBC Logos and all other SBC brands ("SBC Marks") are registered trademarks or trademarks of SBC Communications Inc. or its affiliates. Any use of SBC Marks is prohibited without permission of SBC Communications Inc.

## 27. COPYRIGHTS and COPYRIGHT AGENTS

SBC Yahoo! respects the intellectual property of others, and we ask our users to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide our Copyright Agent the following information:

(a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;

(b) a description of the copyrighted work or other intellectual property that you claim has been infringed;

(c) a description of where the material that you claim is infringing is located on the site;

(d) your address, telephone number, and email address;

(e) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and

(f) a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

The Agent for Notice of claims of copyright or other intellectual property infringement can be reached as follows:

By mail:

Anthony P. Coll  
Copyright Agent  
c/o Yahoo! Inc.  
701 First Avenue  
Sunnyvale, CA 94089  
By phone: (408) 349-5080  
By email: copyright@yahoo-inc.com

Keith J. Epstein  
Vice President & General Counsel  
SBC Internet Services  
300 Convent Street, 19th Floor  
San Antonio, TX 78205  
E-mail: copyright@sbis.sbc.com  
By Phone: (210) 246-8600  
By Fax: (210) 246-8699

## 28. GENERAL INFORMATION

These TOS, and any other policies or guidelines referenced herein, constitute the entire agreement between SBC Yahoo! and you and govern your use of the Service, superceding any prior agreements between you and Yahoo! or SBC with respect to the subject matter of these TOS. You also may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content or third-party software. These TOS and the relationship between you and SBC Yahoo! will be governed by the laws of the State of California without regard to its conflict of law provisions. You and SBC Yahoo! agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Santa Clara, California. The failure of SBC Yahoo! to exercise or enforce any right or provision of these TOS will not constitute a waiver of such right or provision. If any provision of these TOS is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these TOS remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or these TOS

must be filed within one (1) year after such claim or cause of action arose or be forever barred.

The section titles and paragraph headings in these TOS are for convenience only and have no legal or contractual effect.

## 29. VIOLATIONS

For help with reporting violations of these TOS go to: <http://sbc.yahoo.com/help>, or to report a violation email Customer Care at: [abuse@sbcglobal.net](mailto:abuse@sbcglobal.net)

## **EXHIBIT 2**





Important Updates to your AT&T Internet  
Terms of Service

Dear AT&T Internet Service Member:

Effective Oct. 18, we are updating our **AT&T Internet Terms of Service and Acceptable Use Policy**.

We have revised our agreement based on a few key principles. First, we support our customers' right to free expression. Second, we will give our customers clear information about the capabilities of our service and any meaningful limitations on the service. Finally, we will provide our high speed Internet service in discrete, non-overlapping speed tiers.

In line with these principles, we've added some new sections and rewritten others to more clearly describe our Internet service. A few of these important changes are highlighted below.

For all Members:

- **Arbitration Agreement.** We have added language that requires customer disputes with AT&T regarding AT&T Internet Services to be submitted to binding arbitration or small claims court. Arbitration is less formal than a lawsuit in court and often faster. In addition, AT&T will pay for all costs of arbitration, no matter who wins, as long as your claim is not frivolous.

For AT&T High Speed Internet Members:

- **AT&T High Speed Internet Service Description.** We have added new language to the service description to more clearly describe how we provide your high speed Internet connection, and to explain what factors can affect the

performance of your high speed Internet service.

- **Termination of Voice Service.** With AT&T High Speed Internet Direct service, we can deliver the benefits of broadband without a home phone connection. For customers who terminate their home phone service with AT&T — but not their high speed Internet service — we have added new language that will ultimately enable us to maintain a customer's broadband connection at the then current rates, terms, and conditions for AT&T High Speed Internet Direct service.

Other changes include language that better clarifies bundle discounts and requirements, and the addition of a service restoral fee should an account be suspended.

To view the revised terms, we recommend you visit <http://www.att.net/csbellsouth/s/s.dll?spage=cg/legal/att.htm&leg=ytoAug08> to determine how these changes may apply to you and your use of the Service.

**By continuing to use the Service, you signify your continued agreement to the terms and conditions set forth in the Terms of Service document.**

Should you have any questions, please contact us at:

**1.800.288.2020** for AT&T High Speed Internet and AT&T Dial Internet members

**1.888.321.2375** for FastAccess DSL and BellSouth Dial members residing in AL, FL, GA, KY, LA, MS, TN, NC and SC

A list of Frequently Asked Questions is also available at <http://support.att.net/tosfaq>.

Thank you for being an AT&T Internet member. We are happy to have you as part of our online community and look forward to continuing to serve your Internet needs.

Sincerely,

Your AT&T Internet Service Customer Care Team

**Please do not reply via e-mail. The address is automated, unattended, and cannot help with questions or requests.**

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## **Exhibit 3**

## **AT&T High Speed Internet Terms of Service / att.net Terms of Use**

This Terms of Service & Terms of Use (“Agreement”) along with the AT&T Acceptable Use Policy, set forth your obligations, AT&T’s obligations, and the rules you must follow when using the att.net portal (“Site”) and/or AT&T High Speed Internet, AT&T High Speed Internet Direct, AT&T Dial and AT&T U-verse High Speed Internet (“Service(s)”), FastAccess DSL and FastAccess Business DSL, Wireless Broadband provided by BellSouth Entertainment, LLC, BellSouth® Dial Internet Service.

**PLEASE READ THIS AGREEMENT CAREFULLY.** Your registration, payment for or use of the Site and/or Service constitutes your agreement to be bound by the charges, terms and conditions set forth in this Agreement, including those incorporated by reference. This is a binding agreement between you (the Member Account holder), and Yahoo! Inc. (“Yahoo!”) and the AT&T entity that provides your

[\[1\]](#)

Internet Access .

This Agreement is based on four general principles. First, AT&T supports our customers’ right to free expression. Second, AT&T will give our customers clear notice of any meaningful limitations on the Services. Third, AT&T will give our customers clear information about the experience they can expect when using the Services. Fourth, AT&T will provide high speed Internet access service in discrete, non-overlapping speed tiers.

### **1. Changes to the Service & This Agreement**

From time to time, we may change this Agreement, the Site, or Service, including the rates and charges. We will provide you with thirty (30) days notice of material changes via either your Member Account e-mail address or U.S. mail. It is your responsibility to check your e-mail address for any such notices. Your continued subscription to the Service after receipt of such notice constitutes your acceptance of such changes.

We may also, from time to time, make temporary changes to your Service. If a temporary change is made that would have a material impact on your Service, AT&T will give you at least thirty (30) days notice. The terms and conditions for such changes will be included in the notice and incorporated by reference into this Agreement at: [www.att.com/temporaryterms](http://www.att.com/temporaryterms). Your continued subscription to the Service after receipt of the notice constitutes your acceptance of the changes and the associated terms and conditions. In lieu of notice and website posting, AT&T may instead, at its sole discretion, require customers to enter into an agreement with AT&T regarding temporary material changes.

### **2. AT&T High Speed Internet Service Description**

The Service is composed of narrowband or broadband access to the Internet provided by AT&T. The Site, provided by AT&T and Yahoo!, is composed of a broad selection of on-line resources including email, communication tools, forums, shopping services, search services and personalized content and branded programming. Broadband access is provided in speed tiers of: (1) 200 Kbps to 768 Kbps downstream (not available for AT&T U-verse High Speed Internet service), (2) 769 Kbps to 1.5 Mbps downstream; (3) 1.56 Mbps to 3.0 Mbps downstream; (4) 3.1 Mbps to 6.0 Mbps downstream; and (5) 6.1 Mbps to 10.0 Mbps (available only with AT&T U-verse High Speed Internet service) (collectively “Service Capability Speeds”).

The speeds identified above are Service Capability Speeds, which are the downstream rates at which your line transfers Internet access data between the network interface device at your home, office or

apartment building to the first piece of routing equipment in AT&T's network. Service Capability Speeds should not be confused with Throughput Speed, which is the speed at which your modem receives and sends Internet access data ("Throughput Speed."). These speeds may vary and are not guaranteed. Throughput speed depends upon many factors including customer location, destination and traffic on the Internet, interference with high frequency spectrum on your telephone line, wiring inside your home, office or apartment, the capacity or performance of your computer or modem, the server with which you are communicating, internal network factors, and the networks you and others are using when communicating. In order to provide a consistently high-quality video service, AT&T Uverse High Speed Internet throughput speeds may be temporarily reduced when a customer is using other U-verse services in a manner that requires high bandwidth. This could occur more often with higher speed Internet access products. It may be necessary, for some AT&T High Speed Internet users, for AT&T to set a maximum downstream speed on a customer line to enhance the reliability and consistency of performance. While this performance optimization process will prevent some customers from obtaining the maximum downstream speed capability, service capability speed will not be set lower than the service tier you have purchased.

**a. IP Addresses.** AT&T High Speed Internet and AT&T U-verse High Speed Internet Services are provided with either a dynamic Internet Protocol ("IP") address, a static IP address, or multiple static IP address service (as applicable) at AT&T's sole discretion. The dynamic IP address is a single Internet address intended for use with a single Member Account and any associated Sub Accounts. The static IP address or multiple static IP address is intended for use with a single computer or a network of computer/servers. You may not use the Service in a manner that is inconsistent with these intended uses.

### **3. Registration and Membership**

When you complete the registration process for the Site or the Service, you become the "Member Account" holder. You must be 18 years or older to be a Member Account holder. You will be asked to choose a unique "Member ID" for your account. Customers of the Service may also create up to ten "Sub Accounts" (each of which will have a separate password and Member ID). Each Sub Account will also be required to accept this Agreement and complete the Sub Account registration. The Member Account holder is responsible for all activity associated with the Member Account and any of its Sub Accounts, including all fees and charges, whether the charges are incurred by the Member Account or the Sub Accounts.

All information that you provide to AT&T and Yahoo! must be accurate, including your name, address, credit or charge card numbers and expiration dates, and any payment information ("Registration Data"). You are responsible for keeping such information up-to-date and must provide changes promptly to the AT&T Yahoo! Member Center by going to <http://att.yahoo.com/myaccount>.

### **4. Pricing – Term Plans, Bundle Discounts**

When you purchased the Service, you agreed to specific price and plan, which may have included a term of one or two years ("Term Plan"). Similarly, some plans may offer a discount on the Service if you sign up for other AT&T services ("Bundle Discount"). You agree to maintain your Service and the bundled services for the applicable term. If you signed up for a Term Plan or a Bundle Discount, the price available with those plans is valid until one of the following occurs: (1) the term expires; (2) you move from your current service address to another service address; or (3) you drop one of the AT&T services you were required to purchase to receive the special rate.

### **5. Term & Termination**

**a. Early Termination Fee.** When you purchased the Service, you agreed to a specific price and plan, which may have included a term. **You agree that if you cancel your plan before the end of the term, you will pay the early termination fee** associated with that plan. If you did not sign up for a term plan, the term for your Service will be month-to-month.

**b. Suspension/Termination by AT&T or Yahoo!.** AT&T respects freedom of expression and believes it is a foundation of our free society to express differing points of view. AT&T will not terminate, disconnect or suspend service because of the views you or we express on public policy matters, political issues or political campaigns. AT&T and/or Yahoo! may, however, immediately terminate or suspend your Member Account and Sub Accounts, and all or a portion of your Service without notice if: (a) your payment is more than 30 days overdue; (b) you provide false or inaccurate information to AT&T; (c) you (or a Sub Account associated with your Member ID) violate this Agreement or the AT&T Acceptable Use Policy; or (d) you (or a Sub Account associated with your Member ID) engage in conduct that is a violation of any law, regulation or tariff (including, without limitation, copyright and intellectual property laws).

If we terminate or suspend your Service, your license to use any software provided in connection with the Service is also terminated or suspended (as applicable). If your Service is terminated, AT&T has the right to immediately delete all data, files, and other information stored in or for your account without further notice to you. You must pay all charges for the Service through the date of termination. Should you wish to resume Service after any suspension, a restoral of service fee may apply. This fee is in addition to all past due charges and other fees.

**c. Termination of Voice Service.** If you change or terminate your AT&T local wireline voice service, we may in our discretion either terminate your AT&T High Speed Internet Service or continue to provide it at the then-current rates, terms and conditions applicable for AT&T High Speed Internet Direct, our broadband service without voice. You agree to pay any new or higher monthly fees that may apply to your new Service after termination of the wireline voice service. If AT&T elects to terminate your Service, we reserve the right to charge any applicable early termination fees. For AT&T U-verse High Speed Internet customers, AT&T will continue to provide Internet service after termination of the wireline voice service, unless it is not technically feasible to do so.

**d. Access to Yahoo! After Termination by AT&T.** If your Service is terminated by AT&T, you will no longer have access to the Yahoo! network or any of your Member account information using your Member ID, except as outlined in this Section and Section 9 (Yahoo! Premium Services). If you combined your Yahoo! ID with a Member ID, you will not be able to access Yahoo! using your combined ID after termination, unless you close your Member ID (your Member ID will be closed automatically no fewer than 60 days after termination). If you did not combine a Yahoo! ID with your Member ID, you will be given the option (when you sign in at Yahoo! using your Member ID) for at least 60 days after termination, to close your Member ID and transfer certain account information to a new Yahoo! ID. If you continue to access a Yahoo! account through a different Internet access provider after your Service account is terminated, then your use of your Yahoo! account after that time will be subject to the Yahoo! Terms of Service at <http://info.yahoo.com/legal/us/yahoo/utos/utos-173.html>.

**Note:** Sub-accounts with a combined Yahoo! ID may be able to access the Yahoo! account provisioned under their combined Yahoo! ID when the Member ID of the Member Account holder is closed. After the Member ID of the Member Account holder is closed, Sub-Accounts who do not have a combined Yahoo! ID will not be able to transfer any of their Member account information to a new Yahoo! ID. Therefore, Sub-Account holders who wish to elect to transfer should make the election before the Member ID of the Member Account holder is closed.



## 6. Payment

Service customers agree to pay: (1) the monthly fee specified when you ordered your Service; (2) the charge for all equipment required for your Service; (3) activation fees and installation charges, if any; (4) late fees, restoral of service fees and other applicable service charges; and (4) any applicable taxes, recovery fees and surcharges which AT&T pays to municipalities and other governmental entities and may pass on to you.

**a. Credit Check / Advance Payments & Deposits.** Service customers give us permission to obtain their credit information from consumer credit reporting agencies at any time. If we determine that you may be a credit risk due to: (1) unsatisfactory credit rating; (2) insufficient credit history; (3) fraudulent or abusive use of any AT&T services within the last five years; or (4) late payments for current or prior bills, we may refuse to provide the Services or we may require an advance payment, a non-refundable payment, and/or deposit. Interest will not be paid on advance payments or deposits unless required by law. We may require special payment terms such as additional advance payments or deposits if we determine that the initial payment was inadequate. We may establish limits and restrict service or features as we deem appropriate. If your account balance goes beyond the limit we set for you, we may immediately interrupt or suspend service until your balance is brought below the limit. Any charges you incur in excess of your limit become immediately due. Upon determination solely by AT&T of satisfactory payment history or as required by law, AT&T may begin refunding of deposits through bill credits, cash payments, or as otherwise determined solely by AT&T.

**b. Billing.** For customers who choose to self-install the Service, billing will begin when service is provisioned by AT&T, whether or not customer has installed and begun to use the service. For customers who choose to have a technician install the Service, billing will begin when the installation is complete, unless the customer initially selects to self-install, and subsequently asks for a technician installation.

**c. Method of Payment.** Your monthly charges may be billed via a monthly AT&T bill or to a credit card. Credit card billing is not available for AT&T High Speed Internet Direct. AT&T U-verse High Speed Internet customers will automatically receive an online bill (see below), unless you specifically notify us that you want to receive a paper bill by calling the following number: 1-800-ATT-2020.

**d. Credit Card Billing.** You may be asked to provide us with a credit card number from a card issuer that we accept in order to activate your Service. You hereby authorize AT&T to charge and/or place a hold on your credit card with respect to any unpaid charges for Services or any related equipment. You authorize the issuer of the credit card to pay any amounts described herein without requiring a signed receipt, and you agree that these TOS are to be accepted as authorization to the issuer of the credit card to pay any amounts described herein without requiring a signed receipt, and you agree that these TOS are to be accepted as authorization to the issuer of the credit card to pay all such amounts. You authorize AT&T and/or any other company who bills products or services, or acts as billing agent for AT&T to continue to attempt to charge and/or place holds with respect to all sums described herein, or any portion thereof, to your credit card until such amounts are paid in full. You agree to provide AT&T with updated credit card information upon AT&T's request and any time the information you previously provided is no longer valid. You acknowledge and agree that neither AT&T nor any AT&T affiliated company will have any liability whatsoever for any non-sufficient funds or other charges incurred by you as a result of such attempts to charge, and/or place holds on, your credit card. If you mistakenly provide a debit card number, instead of a credit card number, you authorize all charges described herein to be applied to such debit card unless and until you provide a credit card

number. In the event you are enrolled, or later enroll, in an automatic payment or electronic funds transfer plan, you agree that all sums described herein may be charged, at AT&T's option, to the account number provided for such automatic payment or electronic funds transfer plan. When payment is made by credit card or debit card, payment will also be subject to the terms and conditions established by the credit or debit card issuer. If charges cannot be processed through your credit card, or if your bank draft or electronic funds transfer is returned for insufficient funds, we will charge you an additional \$15.00. If the state law where you receive the Service requires a different fee, we will charge you that amount.

**e. Online Billing for AT&T U-verse High Speed Internet Members.** You must register online to establish a personal AT&T My U-verse Account and provide a billing email address. You will then be able to view and pay your bill online by logging on to your personal AT&T My U-verse Account (username and password required).

You understand that you have sole responsibility for the security of your password and you are solely responsible for notifying AT&T if your password is lost or stolen. AT&T is not liable for any claims, costs, damages, or expenses arising from a lost misplaced, or stolen password. If you have forgotten your password or want to change your password for any reason, you may request to reset your password online. It is your responsibility to notify AT&T immediately if your contact information changes.

**f. Late Payment & Failure to Pay.** If you choose to have the charges for your Service added to your telephone bill, and, if AT&T does not receive your payment before the next billing date, you shall pay to AT&T a late payment charge and/or an interest charge of 1.5% (1% in Louisiana), or the highest amount allowed by law, on all charges due and unpaid. Acceptance of late or partial payments (even if marked "Paid in Full") shall not waive any of AT&T rights to collect the full amount due. Notice of any disputes must be in writing and received by us within 30 days after you received your bill or you will waive any objection. **AT&T may suspend or terminate Service if your payment is past due. If AT&T suspends your service for non-payment, you must pay all past due amounts in order to have service restored, and you may also, at AT&T's sole discretion, be required to pay a service restoral fee.** In the event you fail to pay AT&T or AT&T is unable to bill charges to your credit card, AT&T may assign unpaid late balances to a collection agency. In the event legal action is required to recover unpaid amounts, you agree to reimburse AT&T for all expenses incurred to recover sums due, including attorneys fees and other legal expenses.

## **7. Equipment & Software**

Other than the equipment and/or software provided to you by AT&T for use with the Service, you must provide all equipment, devices and software necessary to receive the Service. Any equipment or software that was not provided to you by AT&T is not the responsibility of AT&T, and AT&T will not provide support, or be responsible for ongoing maintenance or management of such equipment. Any AT&T-provided modem will be either a new or a fully inspected and tested refurbished unit. Regardless of whether the equipment used to access your Service (modem, gateway, etc.) is owned by you or AT&T, AT&T reserves the right to manage such equipment for the duration of your Service, and retains exclusive rights to data generated by the equipment. Neither you nor a third party may change, interfere with, or block access to equipment data or settings.

AT&T will repair or replace damaged equipment as AT&T deems necessary. You understand that repair or replacement of equipment may delete stored content, reset personal settings or otherwise alter the functionality of your equipment. If the equipment is damaged due to your intentional acts or negligence as determined by AT&T, you will be responsible for the price of repair or replacement.

**a. *Additional Equipment Information for AT&T U-verse High Speed Internet Customers.***

AT&T will provide to you certain equipment (including Residential Gateway, Or Optical Network Terminal (“ONT”), all of which is herein collectively referred to as “U-verse Equipment”), required for your Service. You agree to rent the U-verse Equipment, as part of your purchase of the Service and/or other U-verse services.

The U-verse Equipment requires electrical power from your premises to operate, which you are responsible for providing. If there is a Residential Gateway at your premises, depending on the other U-verse services you purchase, AT&T may provide an initial Residential Gateway battery backup unit and an initial backup battery. If there is an ONT at your premises, AT&T will install an initial power supply box and provide an initial backup battery for the Optical Network Terminal power supply box. You hereby agree to be solely responsible for determining when backup batteries for any U-verse Equipment require replacement and for replacing and recycling used batteries. You agree to read and follow all manufacturer or vendor directions for the replacement and recycling of backup batteries.

Tampering with the U-verse Equipment, or attempting to connect the equipment to other hardware, will be treated as damage due to your intentional acts or negligence. You agree that you will use the equipment only for its intended residential use, and not for any other purpose (such as on another AT&T network, or on another provider’s (non-AT&T) network).

Upon termination of your Service, for whatever reason, you must return all U-verse Equipment undamaged, within twenty one (21) calendar days to AT&T. If equipment is not returned within twenty one (21) calendar days, or is returned damaged, you will be charged for the value of the U-verse Equipment. We may retain any advance payment or deposit, or portion thereof that previously had not been refunded, if you fail to return the U-verse Equipment within this time period. If all U-verse Equipment is returned within six (6) months of termination, any fees charged for such U-verse Equipment will be refunded (other than fees for damages). No refunds will be made for U-verse Equipment returned after six (6) months from termination.

You agree to notify AT&T immediately, in writing or by calling the AT&T customer support line, if the U-verse Equipment is stolen or if you become aware at any time that Services are being stolen or fraudulently used. When you call or write, you must provide a detailed description of the circumstances of the theft, including documentation of theft or fraudulent use of the U-verse Equipment or Services (such as a copy of a police report). You will be responsible for all charges incurred until you report the theft or fraudulent use. You will also be responsible for stolen U-verse Equipment, however, AT&T may in its sole discretion waive or reduce charges upon submission of documentation of theft or other circumstances. Failure to provide notice to AT&T of theft in a timely manner may result in the termination of your Services and additional charges to you. Unless notified otherwise by AT&T, after you report the theft or fraudulent use of the Services, you will remain responsible for paying your monthly fees for Services not stolen or fraudulently used.

**8. Account Security**

You will receive a password associated with your Member ID upon completing the Site/Service registration process. You agree to keep confidential all passwords, IP addresses, and computer names and are solely responsible for any liability or damages resulting from your failure to maintain that confidentiality. You are also solely and fully responsible and liable for all activities that occur under your password, Member ID or IP address. You agree to do all of the following: (a) immediately notify AT&T if you suspect any breach of security such as loss, theft, Public Use or unauthorized disclosure or use of your Member Account or Sub Account, password, Member ID, or any credit or charge card number provided to AT&T or Yahoo! by calling:

1-866-722-3425 for AT&T Dial subscribers,  
1-877-722-3755 for AT&T High Speed Internet subscribers, and  
1-800-ATT-2020 for AT&T U-verse High Speed Internet subscribers  
1-888-321-2375 for FastAccess DSL and BellSouth Dial Internet subscribers.

(b) ensure that you exit from your account at the end of each session; and (c) periodically change your password. There is a risk that other users may attempt to access your computer through the Internet or connected networks. You acknowledge this risk as inherent to the shared nature of the Service and you agree to take full responsibility for taking adequate security precautions and safeguarding your data from loss.

## **9. Yahoo! Premium Services**

Yahoo! also offers certain premium services. You may be prompted to complete the registration process and provide billing and other information before you can use Premium Services. Premium Services are considered part of the Service and are covered by the terms of this Agreement, but may have separate posted guidelines or additional terms that you must follow when using such Premium Services. In addition, certain services offered by Yahoo! are governed by additional agreements. The posted guidelines, additional terms or additional agreements (as applicable) will be provided to you when you use, sign up for or register for those particular services. Unless otherwise expressly noted, the services provided by Yahoo! are consumer services.

Certain Premium Services are included as part of your membership in the Service. These are called “Core Premium Services.” Other premium services are available for purchase at an additional cost. These are called “A La Carte Premium Services.”

**a. *Termination of Premium Services and Benefits.*** Core Premium Services, any discounts that are provided to Members of the Service on the purchase of certain additional A La Carte Premium Services, or any other benefits provided as part of the Service will terminate upon termination or discontinuance of your membership with the Service. All Core and A La Carte Premium Services, discounts and other benefits provided as part of or in connection with the Service are subject to change at any time without notice. You may cancel a Premium Service at any time by calling Yahoo! Customer Service at (409) 349-5151.

For customers who have a Yahoo! ID that is combined with an account under this Service, any A La Carte Premium Services you may have will remain in effect according to the terms applicable to each of those services after termination of your account. For a period of at least 90 days after the termination of your Service account, you will be asked to close your Member ID when you log in to Yahoo! at any Yahoo! “sign in” opportunity (including, <http://att.yahoo.com>) using your Yahoo! ID or Member ID. If you do not close your Member ID within such period, we will automatically close your Member ID for you. After your Member ID is closed, you will be able to access your A La Carte Premium Services using your Yahoo! ID.

If you did not combine a Yahoo! ID with an account under this Service, then any A La Carte Premium Services that you purchased under your Member ID will terminate if you fail to transfer them to a new Yahoo! ID within 90 days after termination of your Service account. Unless and until they are terminated, any A La Carte Premium services you may have will remain in effect according to the terms applicable to each of those services. Upon transferring your A La Carte Premium Services to a new Yahoo! ID, you will be able to access these premium services using your new Yahoo! ID. You will be given the option to transfer these premium services to a new Yahoo! ID, when you log in to Yahoo! at

any Yahoo! “sign in” opportunity (including, <http://att.yahoo.com>) using your Member ID within the transfer period. If you do not transfer these premium services to a new Yahoo! ID, we will terminate these premium services and you may lose some associated data that is stored in connection with such premium services, such as e-mails, photos, or briefcase data that are attributable to premium services that offer extra storage in the Yahoo! Mail, Yahoo! Photos, and Yahoo! Briefcase properties. Your Member ID will close when you transfer your A La Carte Premium Services or, if you fail to transfer them, at the end of the transfer period.

**Note:** Sub-Accounts with a combined Yahoo! ID will keep their A La Carte Premium Services under their Yahoo! ID when the Member ID of the member Account holder is closed. Sub-Accounts with no combined Yahoo! ID will not have an opportunity to transfer their A La Carte Premium Services and associated data, Sub-Account holders should make the election following the process in (b) above before the Member ID of the Member Account is closed.

## 10. Restrictions on Use

Your use of the Site & Service is subject to the AT&T Acceptable Use Policy (“AUP”) (which may be viewed at <http://support.sbcglobal.net/legal/aup>). Violations of the AUP may result in suspension or termination of your Member Account or the Service by AT&T and/or Yahoo!.

a. **No Resale.** The Service is provided for your use only (unless otherwise specifically stated) and you agree not to reproduce, duplicate, copy, sell, transfer, trade, resell or exploit for any commercial purposes your membership in the Service, any portion of the Service, use of the Service, or access to the Service, including, but not limited to, reselling capabilities enabled or used by a specific application (including, without limitation, Voice Over Internet Protocol (VOIP)). All aspects of the Service and Site, except that portion provided by third party providers, is copyrighted and property of AT&T and/or Yahoo! as applicable. You agree that the Service is not to be used to trunk or facilitate public internet access (“Hotspots”) or any other public use of the Service.

b. **Copyright Infringement & Digital Millennium Copyright Act.** You are prohibited from infringing, publishing, submitting, copying, uploading, downloading, posting, transmitting, reproducing, or distributing software, video or audio content, or any other material that is protected by copyright, trademark, patent, trade secret, any other type of intellectual property rights, trademark laws (by rights of privacy or publicity) or other proprietary right of any party unless you own or control the rights thereto or have received all necessary consent to do the same. This prohibition includes the use of any material or information including images or photographs that are made available through the Site or Service(s). **AT&T and Yahoo! assume no responsibility, and you assume all risks, regarding the determination of whether material is in the public domain, or may otherwise be used by you for such purposes.**

AT&T respects the intellectual property rights of others. If you believe that your work has been copied and has been posted, stored or transmitted to the Site in a way that constitutes copyright infringement, please submit a notification pursuant to the Digital Millennium Copyright Act (“DMCA”) by providing AT&T’s Copyright Agent the following written information: (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (b) a description of the copyrighted work that you claim has been infringed upon; (c) a specific description of where the material that you claim is infringing is located on the Site; (d) your address, telephone number, and e-mail address; (e) a statement by you that you have a good-faith belief that the disputed use is not



authorized by the copyright owner, its agent, or the law; (f) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

AT&T's Copyright Agent for notice of claims of copyright infringement on the Site can be reached as follows:

Manager of Security & Copyright Infringement 1800 Perimeter Park Drive, Suite 100 Morrisville, NC 27560 Phone: (919) 319-5737 Fax: (919) 319-8154 E-mail: [copyright@att.com](mailto:copyright@att.com)

For more information about AT&T's copyright protection practices under the DMCA and for information on how to contact AT&T's DMCA agent, please refer to [www.att.net/legal/copyright](http://www.att.net/legal/copyright).

**c. Use by Children.** AT&T is concerned about the safety and privacy of all its users, particularly children. For this reason, children under the age of 13 will not be permitted to access the Site or Service unless added as a Sub Account by a Member Account holder who is their legal guardian. You understand that by adding a child to your Member Account, you are giving your child access to features that are available as part of the Site or Service (including email, message boards, clubs, and instant messages) and the Internet. Please remember that the Service is designed to appeal to a broad audience. It is your responsibility to determine whether the features provided through the Site and Service are appropriate for a minor.

AT&T suggests that you take advantage of the access controls offered with the Service, which allow you, as the Member Account holder, to block access to certain types of web content you may feel are inappropriate for minors. However, AT&T also recommends that you remain diligent in the supervision of any minors in their use of the Service and the Internet. Access controls provided through the Service are intended as a guide only. Neither AT&T nor Yahoo! nor their licensors can be responsible for any content accessed by you or minors, whether or not you take advantage of the access controls provided through the Service. In addition, neither AT&T nor Yahoo! nor their licensors guarantee the accuracy of such access controls, and you agree that you will not hold AT&T or Yahoo! liable for any loss or damage of any kind incurred as a result of the use of such access controls.

## **11. Content & Links**

You, and not AT&T or Yahoo!, are entirely responsible for all content that you upload, download, post, email, transmit or otherwise make available via the Site and Service ("Content"). AT&T and Yahoo! do not generally pre-screen or control Content that is posted by users of the Site, and, therefore, do not guarantee the accuracy, integrity or quality of such Content. AT&T and Yahoo! shall have the right (but not the obligation) in its sole discretion to pre-screen, refuse or remove any Content that is available via our Site that is illegal, violates these Terms or the AUP, or exposes AT&T or Yahoo! to any risk of claims, lawsuits or liability. As the providers of the Service, we are only a forum and are not liable for any statements, representations, or Content provided by Site users. Any opinions, advice or recommendations expressed therein are those of the users providing such Content and not those of AT&T or Yahoo!. We do not endorse any Content or any opinion, recommendation or advice expressed therein.

AT&T and Yahoo! may preserve Content and may also disclose Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with

legal process; (b) enforce this Agreement; (c) respond to claims that any Content violates the rights of third-parties; or (d) protect the rights, property, or personal safety of AT&T, Yahoo!, other end users and the public.

**a. *Grant of License.*** AT&T and Yahoo! do not claim ownership of Content you submit or make available for inclusion on the Site or Service. However, with respect to Content you submit or make available for inclusion on publicly accessible areas of the Site, you grant AT&T and Yahoo! the following world-wide, royalty free and non-exclusive license(s) as applicable:

- (i) With respect to Content you submit or make available for inclusion on publicly accessible areas of Yahoo! Groups, you grant AT&T and Yahoo! the license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Site solely for the purposes of providing and promoting the specific Yahoo! Group to which such Content was submitted or made available. This license exists only for as long as you elect to continue to include such Content on the Site and will terminate at the time you remove or Yahoo! removes such Content from the Site.
- (ii) With respect to photos, graphics, audio or video you submit or make available for inclusion on any publicly accessible area of the Site other than Yahoo! Groups, you grant AT&T and Yahoo! the license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Site solely for the purpose for which such Content was submitted or made available. This license exists only for as long as you elect to continue to include such Content on the Site and will terminate at the time you remove or Yahoo! removes such Content from the Site.
- (iii) With respect to Content other than photos, graphics, audio or video you submit or make available for inclusion on publicly accessible areas of the Site other than Yahoo! Groups, you grant AT&T and Yahoo! the perpetual, irrevocable and fully sub-licensable license to use, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display such Content (in whole or in part) and to incorporate such Content into other works in any format or medium now known or later developed.

**b. *Links.*** The Site may include links to other web sites or resources. These links are to websites which AT&T and Yahoo! do not control. AT&T and Yahoo! are not, therefore, responsible and will not be liable for the availability, content, advertising, products or other materials available on such websites or any damage alleged to have been caused by or in connection with the use of content available on such websites.

**c. *Third Party Content.*** Content contained in sponsor advertisements or information presented to you through the Site or advertisers is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly authorized by AT&T, Yahoo! or advertisers you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Site, Service or the Software in whole or in part.

## **12. Privacy Policies**

Registration data and certain other information about you are subject to the respective privacy policies of AT&T and Yahoo!. For more information see: <http://att.yahoo.com/privacy>.

## **13. DISPUTE RESOLUTION WITH AT&T BY BINDING ARBITRATION**

**PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.**



Most customer concerns can be resolved quickly and to the customer's satisfaction by calling AT&T at 1-800-288-2020. In the unlikely event that AT&T's business office is unable to resolve a complaint you may have to your satisfaction (or if AT&T has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted. AT&T will pay all costs of arbitration, no matter who wins, so long as your claim is not frivolous. Moreover, in arbitration you are entitled to recover attorneys' fees from AT&T to at least the same extent as you would be in court. In addition, under certain circumstances (as explained below), AT&T will pay you and your attorney a special premium if the arbitrator awards you an amount that is greater than what AT&T has offered you to settle the dispute.

***Arbitration Agreement:***

a. AT&T and you agree to arbitrate all disputes and claims between you and AT&T which are Arbitration Claims. "Arbitration Claims" as used in this Agreement means claims against AT&T based in whole or in part upon the Service(s), and does not include claims against Yahoo, or claims against AT&T or Yahoo that are based in whole or in part on the Site. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to Arbitration Claims which:

- are based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
- arose before this or any prior Agreement (including, but not limited to, claims relating to advertising);
- are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- may arise after the termination of this Agreement.

Notwithstanding the foregoing, either party may bring an individual action in small claims court. YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND AT&T ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY AND TO PARTICIPATE IN A CLASS ACTION WITH RESPECT TO ARBITRATION CLAIMS. This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

b. A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to AT&T should be addressed to: AT&T Internet Services - Legal Department, 175 E. Houston, Suite 4D90, San Antonio, Texas 78205 ("Notice Address"). The Notice must (1) describe the nature and basis of the claim or dispute; and (2) set forth the specific relief sought ("Demand"). If AT&T and you do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, you or AT&T may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by AT&T or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or AT&T is entitled.

**You may download or copy a form Notice and a form to initiate arbitration from here:**

**www.att.com/residentialarbitration.**

c. After AT&T receives notice at the Notice Address that you have commenced arbitration, it will promptly reimburse you for your payment of the filing fee. (The filing fee currently is \$125 for claims under \$10,000, but is subject to change by the arbitration provider. If you are unable to pay this fee, AT&T will pay it directly upon receiving a written request at the Notice Address.) The arbitration will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”) of the American Arbitration Association (“AAA”), as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. All issues, including the scope of this arbitration provision, are for the arbitrator to decide, except that issues relating to the enforceability of the arbitration provision are for the court to decide, but the arbitrator is bound by the terms of this Agreement. In no event shall the arbitrator have the authority to (a) make any award that is in excess of or contrary to what this Agreement provides, or (b) order consolidation or arbitration on a class wide or representative basis. Unless AT&T and you agree otherwise, any arbitration hearings will take place in the county (or parish) of your billing address. If your claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Except as otherwise provided for herein, AT&T will pay all AAA filing, administration and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse AT&T for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules.

d. If, after finding in your favor in any respect on the merits of your claim, the arbitrator issues you an award that is:

- equal to or less than the greater of (1) \$5,000 or (2) the maximum claim that may be brought in small claims court in the county of your billing address; and
- greater than the value AT&T’s last written settlement offer made before an arbitrator was selected,

then AT&T will:

- pay you the greater of (1) \$5,000 or (2) the maximum claim that may be brought in small claims court in the county of your billing address (“the premium”) instead of the arbitrator’s award; and
- pay your attorney, if any, twice the amount of attorneys’ fees, and reimburse any expenses, that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration (“the attorney premium”).

If AT&T did not make a written offer to settle the dispute before an arbitrator was selected, you and your attorney will be entitled to receive the premium and the attorney premium, respectively, if the arbitrator awards you any relief on the merits. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the premium and the attorney premium at any time during the proceeding and upon request from either party made within fourteen (14) days of the arbitrator’s ruling on the merits.

e. The right to attorneys' fees and expenses discussed in paragraph (d) supplements any right to attorneys' fees and expenses you may have under applicable law. Thus, if you would be entitled to a larger amount under the applicable law, this provision does not preclude the arbitrator from awarding you that amount. However, you may not recover duplicative awards of attorneys' fees or costs. Although under some laws AT&T may have a right to an award of attorneys' fees and expenses if it prevails in an arbitration, AT&T agrees that it will not seek such an award.

f. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. YOU AND AT&T AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and AT&T agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific proviso is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

g. Notwithstanding any provision in this Agreement to the contrary, we agree that if AT&T makes any change to this arbitration provision (other than a change to the Notice Address) during the period of time that you are receiving Services, you may reject any such change by sending us written notice within 30 days of the change to the Arbitration Notice Address provided above. By rejecting any such change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision..

#### 14. **Dispute Resolution with Yahoo**

The relationship between users of the Site and Yahoo! shall be governed by the laws of the State of California without regard to its conflict of law provisions. You and Yahoo! agree, for disputes against Yahoo, to submit to the personal and exclusive jurisdiction of the courts located within the county of Santa Clara, California.

#### 15. **Software – End User License Agreement**

If you have connected to the Service by downloading or installing AT&T's and/or Yahoo!'s Internet software ("Software"), your use of that Software is subject to the End User License Agreement that accompanied that Software. Otherwise, AT&T, Yahoo! or its applicable third party licensors, grants you a personal, non-exclusive right and license to use the object code of any software provided to you in conjunction with the Service on a single computer; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software. You agree not to modify the Software in any manner or form, nor to use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the Service. You agree not to access the Service by any means other than through the interface that is provided by AT&T and Yahoo! for use in accessing the Service. The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraphs (a) through (d) of the Commercial Computer Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause of DFARS and in similar clauses in the NASA FAR Supplement.

AT&T, Yahoo!, or applicable third party licensors may provide Software upgrades, updates or

supplements (such as, but not limited to, adding or removing features or updating security components). You understand that whether the equipment is owned by you or AT&T, AT&T, Yahoo!, or the applicable third party licensor, has the unrestricted right, but not the obligation, to upgrade, update, or supplement the Software on your equipment at any time.

**Export Limits.** None of the software or underlying information or technology may be downloaded or otherwise exported or re-exported (a) into (or to a national or resident of) any country to which the United States has embargoed goods; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. The Software and any underlying technology may not be exported outside the United States or to any foreign entity or "foreign person" as defined by U.S. government regulations, including without limitation, anyone who is not a citizen, national or lawful permanent resident of the United States.

#### **16. Operational Limits/Force Majeure**

Provisioning of the Service is subject to the availability and the operational limitations of the requisite equipment and associated facilities. You understand and agree that temporary interruptions of the Service may occur as normal events in the provision of the Service and that AT&T and Yahoo! are not liable for such interruptions. You further understand and agree that AT&T and Yahoo! have no control over third party networks you may access in the course of your use of the Service, and therefore, delays and disruptions of other network transmissions are beyond the control of AT&T and Yahoo!. In addition, AT&T and Yahoo! are not liable for any failure of performance due to any cause beyond their reasonable control including acts of God, fire, explosion, vandalism, terrorism, cable cut, major weather disturbance, national emergencies, riots, wars, labor difficulties, supplier failures, shortages, breaches, any law, order, regulation, direction, action, or request by any government, civil or military authority, or suspension of existing service in compliance with state and/or federal law, rules and regulations, or delays caused by you or your equipment.

#### **17. Support + Customer Service**

AT&T provides free basic customer care for Service purchased from AT&T and covered under this Agreement. However, Customers in some areas are also be eligible for Support +, a fee-based option for customer service and trouble-shooting associated with issues unrelated to the Service (e.g. help setting up your computer or troubleshooting problems with certain operating systems). Should you choose to purchase or subscribe to AT&T's Support + service, you agree to be bound by the Terms & Conditions located at: [www.att.com/supportplus](http://www.att.com/supportplus). AT&T reserves the right to change these Terms & Conditions from time to time in its sole discretion, with or without prior notice, by displaying the revised verbiage on [www.att.com/supportplus](http://www.att.com/supportplus). It is your obligation to periodically review the Support + Terms & Conditions. Your use of the Support + service following any such change (whether or not such changes are reviewed) constitutes your agreement to be bound by the Terms & Conditions as amended.

#### **18. DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

1. YOUR USE OF THE SITE, SERVICE AND/OR SOFTWARE IS AT YOUR SOLE RISK. THEY ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. AT&T, YAHOO! AND THEIR SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT

NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

2. AT&T, YAHOO! AND THEIR SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS MAKE NO WARRANTY THAT (i) THE SITE, SERVICE AND/OR SOFTWARE WILL MEET YOUR REQUIREMENTS, (ii) THE SITE, SERVICE AND/OR SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE (FOR EXAMPLE BUT WITHOUT LIMITATION, NEITHER AT&T NOR YAHOO! WARRANTS THAT YOU WILL ALWAYS RECEIVE EMAILS ADDRESSED TO YOU), (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SITE, SERVICE AND/OR SOFTWARE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SITE, SERVICE AND/OR SOFTWARE WILL MEET YOUR EXPECTATION, AND (v) ANY ERRORS IN THE SITE, SERVICE AND/OR SOFTWARE WILL BE CORRECTED.
3. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SITE, SERVICE AND/OR SOFTWARE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
4. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM AT&T OR YAHOO! OR THROUGH OR FROM THE SITE, SERVICE AND/OR SOFTWARE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT .

## **19. LIMITATION OF LIABILITY**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT NEITHER AT&T NOR YAHOO! NOR THEIR SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS OR LICENSORS WILL BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF AT&T OR YAHOO! HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM; (a) THE USE OR THE INABILITY TO USE THE SITE, SERVICE AND/OR SOFTWARE; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES ; (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SITE, SERVICE AND/OR SOFTWARE; (e) FAILURE TO INSURE THE COMPATIBILITY OF YOUR SYSTEM (I.E., THE EQUIPMENT, DEVICES, AND SOFTWARE THAT YOU PROVIDE TO RECEIVE THE SERVICE) WITH THE SITE, SERVICE AND/OR SOFTWARE, OR (f) ANY OTHER MATTER RELATING TO THE SITE, SERVICE AND/OR SOFTWARE.

***Exclusions and Limitations.*** SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF SECTIONS 18 AND 19 MAY NOT APPLY TO YOU.

## **20. Indemnity**



You agree to indemnify and hold Yahoo!, AT&T and their subsidiaries, affiliates, officers, agents, co-branders, licensors or other partners and employees harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Content you submit, post, transmit or otherwise make available through the Site or Service, your use of the Site or Service, your connection to the Site or Service, your violation of this Agreement, your violation of the AUP or your violation of any rights of another.

You acknowledge that you are responsible for all use of the Site and Service using your account, including use by Sub Accounts, and that this Agreement, the Acceptable Use Policy and Privacy Policies, as amended from time to time, apply to any and all usage of your account, including use by Sub Accounts. You agree to abide by these terms and you agree to defend, hold harmless and indemnify AT&T and Yahoo! from and against any and all claims stemming from usage of this account and any Sub-Account-whether or not such usage is expressly authorized by you.

## **21. General**

**a. *Special Admonition for Services Related to Financial Matters.*** If you intend to create or join any service, receive or request any news, messages, alerts or other information from the Site or Service concerning companies, stock quotes, investments or securities, AT&T and Yahoo! and their licensors will not be responsible or liable for the accuracy, usefulness or availability of any information transmitted or made available via the Service, and will not be responsible or liable for any trading or investment decisions made based on such information. The Site and Service is provided for informational purposes only, and no Content included in the Site or Service is intended for trading or investing purposes.

**b. *Contact Information.*** Unless otherwise specified in this Agreement, notices by Members to AT&T must be given by calling: for AT&T Dial subscribers (1-866-722-3425), for AT&T High Speed Internet subscribers (1-877-722-3755), and for AT&T U-verse High Speed Internet subscribers (1-800-ATT-2020), for FastAccess DSL and BellSouth Dial Internet subscribers (1-888-321-2375). LEGAL NOTICES to AT&T and Yahoo! must be given by letter delivered by first class US mail to AT&T Service, PO Box 204089, Austin, Texas 78720-4089.

### **c. *Trademark Information/Proprietary Rights***

The YAHOO!, Yahoo! logo, and all other Yahoo! logos and product and service names are each trademarks of Yahoo! Inc. (the "Yahoo! Marks"). You may not display or use the Yahoo! Marks in any manner without Yahoo's prior written permission. AT&T and the AT&T logos and all other AT&T brands, logos and product and service names ("AT&T marks") are registered trademarks or trademarks of AT&T Intellectual Property. Any use of AT&T Marks is prohibited without permission of AT&T Intellectual Property.

Nothing contained in this Agreement may be construed to convey to you any interest, title, or license in the Member ID, email address, Universal Resource Locator, IP address, or domain name used by you in connection with the Service.

**d. *Additional Terms.*** This Agreement, any other policies or guidelines referenced herein and the terms set forth in any promotional offer for the Service constitute the entire agreement between AT&T, Yahoo! and you. This Agreement governs your use of the Site and/or Service, superseding any prior agreement between you and Yahoo! or AT&T with respect to the subject matter of this Agreement. You also may be subject to additional terms and conditions that may apply when you use or purchase certain

other Yahoo!, AT&T or affiliate services, third-party content or third-party software. The failure of AT&T or Yahoo! to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect. You agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this agreement. You agree that your Yahoo! account is non-transferable and any rights to your Yahoo! I.D. or contents within you account terminate upon your death. Upon receipt of a copy of a death certificate, your account may be terminated and all contents therein permanently deleted. You agree that regardless of any statute of laws to the contrary, any claim or cause of action arising out of or related to use of the Service or this Agreement must be filled within one (1) year after such claim or cause of action arose or be forever barred. We can assign all or part of AT&T or Yahoo's rights or duties under this Agreement without notifying you. You may not assign this Agreement or the Services without prior written consent. If any part of this Agreement is found invalid, the rest of the Agreement will remain valid and enforceable. The section titles and paragraph headings in this Agreement are for convenience only and have no legal or contractual effect.

*e. **Survival.*** Obligations and rights in connection with this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, will survive the termination, cancellation or expiration of the Agreement, including, but not limited to those in the following sections: Equipment and Software, Payment, Disclaimer of Warranties, Limitation of Liability, Dispute Resolution by Binding Arbitration, General.

To report violations of this Agreement or the AT&T Acceptable Use Policy, please go to:  
<http://help.sbcglobal.net/servabuse/php> or e-mail us at [abuse@sbcglobal.net](mailto:abuse@sbcglobal.net).

[1]

AT&T High Speed Internet, and AT&T High Speed Internet Direct are provided by AT&T Internet Services; FastAccess DSL, FastAccess Business DSL and BellSouth® Dial Internet Service are provided by BellSouth Telecommunications; AT&T U-verse High Speed Internet is provided by your local AT&T telephone company which is one of the following: Southwestern Bell Telephone, L.P., Pacific Bell Telephone Company, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., The Southern New England Telephone Company, or BellSouth Telecommunications, Inc. AT&T Dial may be provided by any of the AT&T companies listed above (each of which is referred to herein as "AT&T").



## **Exhibit 4**

## **AT&T High Speed Internet Terms of Service / att.net Terms of Use**

This Terms of Service & Terms of Use (“Agreement”) along with the AT&T Acceptable Use Policy, set forth your obligations, AT&T’s obligations, and the rules you must follow when using the att.net portal (“Site”) and/or AT&T High Speed Internet, AT&T High Speed Internet Direct, AT&T Dial and AT&T U-verse High Speed Internet (“Service(s)”), FastAccess DSL and FastAccess Business DSL, Wireless Broadband provided by BellSouth Entertainment, LLC, BellSouth® Dial Internet Service.

**PLEASE READ THIS AGREEMENT CAREFULLY.** Your registration, payment for or use of the Site and/or Service constitutes your agreement to be bound by the charges, terms and conditions set forth in this Agreement, including those incorporated by reference. This is a binding agreement between you (the Member Account holder), and Yahoo! Inc. (“Yahoo!”) and the AT&T entity that provides your

[\[1\]](#)

Internet Access .

This Agreement is based on four general principles. First, AT&T supports our customers’ right to free expression. Second, AT&T will give our customers clear notice of any meaningful limitations on the Services. Third, AT&T will give our customers clear information about the experience they can expect when using the Services. Fourth, AT&T will provide high speed Internet access service in discrete, non-overlapping speed tiers.

### **1. Changes to the Service & This Agreement**

From time to time, we may change this Agreement, the Site, or Service, including the rates and charges. We will provide you with thirty (30) days notice of material changes via either your Member Account e-mail address or U.S. mail. It is your responsibility to check your e-mail address for any such notices. Your continued subscription to the Service after receipt of such notice constitutes your acceptance of such changes.

We may also, from time to time, make temporary changes to your Service. If a temporary change is made that would have a material impact on your Service, AT&T will give you at least thirty (30) days notice. The terms and conditions for such changes will be included in the notice and incorporated by reference into this Agreement at: [www.att.com/temporaryterms](http://www.att.com/temporaryterms). Your continued subscription to the Service after receipt of the notice constitutes your acceptance of the changes and the associated terms and conditions. In lieu of notice and website posting, AT&T may instead, at its sole discretion, require customers to enter into an agreement with AT&T regarding temporary material changes.

### **2. AT&T High Speed Internet Service Description**

The Service is composed of narrowband or broadband access to the Internet provided by AT&T. The Site, provided by AT&T and Yahoo!, is composed of a broad selection of on-line resources including email, communication tools, forums, shopping services, search services and personalized content and branded programming. Broadband access is provided in speed tiers of: (1) 200 Kbps to 768 Kbps downstream (not available for AT&T U-verse High Speed Internet service), (2) 769 Kbps to 1.5 Mbps downstream; (3) 1.56 Mbps to 3.0 Mbps downstream; (4) 3.1 Mbps to 6.0 Mbps downstream; (5) 6.1 Mbps to 10.0 Mbps (available only with AT&T U-verse High Speed Internet service); and (6) 10.1 Mbps to 18 Mbps downstream (available only with AT&T U-verse High Speed Internet service) (collectively “Service Capability Speeds”). AT&T may periodically introduce additional speed tiers. Because these speed tiers may become available before this Agreement is updated, you should check [www.att.com](http://www.att.com) for the most current product information. For purposes of clarity, this Agreement applies

to all speed tiers offered by AT&T, even those which are not specifically identified above.

The speeds identified above are Service Capability Speeds, which are the downstream rates at which your line transfers Internet access data between the network interface device at your home, office or apartment building to the first piece of routing equipment in AT&T's network. Service Capability Speeds should not be confused with Throughput Speed, which is the speed at which your modem receives and sends Internet access data ("Throughput Speed."). These speeds may vary and are not guaranteed. Throughput speed depends upon many factors including customer location, destination and traffic on the Internet, interference with high frequency spectrum on your telephone line, wiring inside your home, office or apartment, the capacity or performance of your computer or modem, the server with which you are communicating, internal network factors, and the networks you and others are using when communicating. In order to provide a consistently high-quality video service, AT&T Uverse High Speed Internet throughput speeds may be temporarily reduced when a customer is using other U-verse services in a manner that requires high bandwidth. This could occur more often with higher speed Internet access products. In order to enhance reliability and consistency of performance, some broadband access lines may be provisioned at less than the maximum speed capability but within the range of speed purchased.

**a. IP Addresses.** AT&T High Speed Internet and AT&T U-verse High Speed Internet Services are provided with either a dynamic Internet Protocol ("IP") address, a static IP address, or multiple static IP address service (as applicable) at AT&T's sole discretion. The dynamic IP address is a single Internet address intended for use with a single Member Account and any associated Sub Accounts. The static IP address or multiple static IP address is intended for use with a single computer or a network of computer/servers. You may not use the Service in a manner that is inconsistent with these intended uses.

### **3. Registration and Membership**

When you complete the registration process for the Site or the Service, you become the "Member Account" holder. You must be 18 years or older to be a Member Account holder. You will be asked to choose a unique "Member ID" for your account. Customers of the Service may also create up to ten "Sub Accounts" (each of which will have a separate password and Member ID). Each Sub Account will also be required to accept this Agreement and complete the Sub Account registration. The Member Account holder is responsible for all activity associated with the Member Account and any of its Sub Accounts, including all fees and charges, whether the charges are incurred by the Member Account or the Sub Accounts.

All information that you provide to AT&T and Yahoo! must be accurate, including your name, address, credit or charge card numbers and expiration dates, and any payment information ("Registration Data"). You are responsible for keeping such information up-to-date and must provide changes promptly to the AT&T Yahoo! Member Center by going to <http://att.yahoo.com/myaccount>.

### **4. Pricing – Term Plans, Bundle Discounts**

When you purchased the Service, you agreed to specific price and plan, which may have included a term of one or two years ("Term Plan"). Similarly, some plans may offer a discount on the Service if you sign up for other AT&T services ("Bundle Discount"). You agree to maintain your Service and the bundled services for the applicable term. If you signed up for a Term Plan or a Bundle Discount, the price available with those plans is valid until one of the following occurs: (1) the term expires; (2) you move from your current service address to another service address; or (3) you drop one of the AT&T services you were required to purchase to receive the special rate.

## 5. Termination

**a. Early Termination Fee.** When you purchased the Service, you agreed to a specific price and plan, which may have included a term. **You agree that if you cancel your plan before the end of the term, you will pay the early termination fee** associated with that plan. If you did not sign up for a term plan, the term for your Service will be month-to-month.

**b. Suspension/Termination by AT&T or Yahoo!.** AT&T respects freedom of expression and believes it is a foundation of our free society to express differing points of view. AT&T will not terminate, disconnect or suspend service because of the views you or we express on public policy matters, political issues or political campaigns. AT&T and/or Yahoo! may, however, immediately terminate or suspend your Member Account and Sub Accounts, and all or a portion of your Service without notice if: (a) your payment is more than 30 days overdue; (b) you provide false or inaccurate information to AT&T; (c) you (or a Sub Account associated with your Member ID) violate this Agreement or the AT&T Acceptable Use Policy; or (d) you (or a Sub Account associated with your Member ID) engage in conduct that is a violation of any law, regulation or tariff (including, without limitation, copyright and intellectual property laws).

If we terminate or suspend your Service, your license to use any software provided in connection with the Service is also terminated or suspended (as applicable). If your Service is terminated, AT&T has the right to immediately delete all data, files, and other information stored in or for your account without further notice to you. You must pay all charges for the Service through the date of termination. Should you wish to resume Service after any suspension, a restoral of service fee may apply. This fee is in addition to all past due charges and other fees.

**c. Termination of Voice Service.** If you change or terminate your AT&T local wireline voice service, we may in our discretion either terminate your AT&T High Speed Internet Service or continue to provide it at the then-current rates, terms and conditions applicable for AT&T High Speed Internet Direct, our broadband service without voice. You agree to pay any new or higher monthly fees that may apply to your new Service after termination of the wireline voice service. If AT&T elects to terminate your Service, we reserve the right to charge any applicable early termination fees. For AT&T U-verse High Speed Internet customers, AT&T will continue to provide Internet service after termination of the wireline voice service, unless it is not technically feasible to do so.

**d. Termination of Dial Service.** Monthly recurring charges for Dial service are not prorated. If you disconnect, cancel, move to another price plan or are suspended by AT&T prior to month end, you will be charged for the entire month of service. If you upgrade your AT&T Dial service to an AT&T High Speed Internet service your Dial charges will be prorated.

**e. Access to Yahoo! After Termination by AT&T.** If your Service is terminated by AT&T, you will no longer have access to the Yahoo! network or any of your Member account information using your Member ID, except as outlined in this Section and Section 9 (Yahoo! Premium Services). If you combined your Yahoo! ID with a Member ID, you will not be able to access Yahoo! using your combined ID after termination, unless you close your Member ID (your Member ID will be closed automatically no fewer than 60 days after termination). If you did not combine a Yahoo! ID with your Member ID, you will be given the option (when you sign in at Yahoo! using your Member ID) for at least 60 days after termination, to close your Member ID and transfer certain account information to a new Yahoo! ID. If you continue to access a Yahoo! account through a different Internet access provider after your Service account is terminated, then your use of your Yahoo! account after that time will be

subject to the Yahoo! Terms of Service at <http://info.yahoo.com/legal/us/yahoo/utos/utos-173.html>.

**Note:** Sub-accounts with a combined Yahoo! ID may be able to access the Yahoo! account provisioned under their combined Yahoo! ID when the Member ID of the Member Account holder is closed. After the Member ID of the Member Account holder is closed, Sub-Accounts who do not have a combined Yahoo! ID will not be able to transfer any of their Member account information to a new Yahoo! ID. Therefore, Sub-Account holders who wish to elect to transfer should make the election before the Member ID of the Member Account holder is closed.

## **6. Payment**

Service customers agree to pay: (1) the monthly fee specified when you ordered your Service; (2) the charge for all equipment required for your Service; (3) activation fees and installation charges, if any; (4) late fees, restoral of service fees and other applicable service charges; and (4) any applicable taxes, recovery fees and surcharges which AT&T pays to municipalities and other governmental entities and may pass on to you.

**a. Credit Check / Advance Payments & Deposits.** Service customers give us permission to obtain their credit information from consumer credit reporting agencies at any time. If we determine that you may be a credit risk due to: (1) unsatisfactory credit rating; (2) insufficient credit history; (3) fraudulent or abusive use of any AT&T services within the last five years; or (4) late payments for current or prior bills, we may refuse to provide the Services or we may require an advance payment, a non-refundable payment, and/or deposit. Interest will not be paid on advance payments or deposits unless required by law. We may require special payment terms such as additional advance payments or deposits if we determine that the initial payment was inadequate. We may establish limits and restrict service or features as we deem appropriate. If your account balance goes beyond the limit we set for you, we may immediately interrupt or suspend service until your balance is brought below the limit. Any charges you incur in excess of your limit become immediately due. Upon determination solely by AT&T of satisfactory payment history or as required by law, AT&T may begin refunding of deposits through bill credits, cash payments, or as otherwise determined solely by AT&T.

**b. Billing.** For customers who choose to self-install the Service, billing will begin when service is provisioned by AT&T, whether or not customer has installed and begun to use the service. For customers who choose to have a technician install the Service, billing will begin when the installation is complete, unless the customer initially selects to self-install, and subsequently asks for a technician installation.

**c. Method of Payment.** Your monthly charges may be billed via a monthly AT&T bill or to a credit card. Credit card billing is not available for AT&T High Speed Internet Direct. AT&T U-verse High Speed Internet customers will automatically receive an online bill (see below), unless you specifically notify us that you want to receive a paper bill by calling the following number: 1-800-ATT-2020.

**d. Credit Card Billing.** You may be asked to provide us with a credit card number from a card issuer that we accept in order to activate your Service. You hereby authorize AT&T to charge and/or place a hold on your credit card with respect to any unpaid charges for Services or any related equipment. You authorize the issuer of the credit card to pay any amounts described herein without requiring a signed receipt, and you agree that these TOS are to be accepted as authorization to the issuer of the credit card to pay any amounts described herein without requiring a signed receipt, and you agree that these TOS are to be accepted as authorization to the issuer of the credit card to pay all such

amounts. You authorize AT&T and/or any other company who bills products or services, or acts as billing agent for AT&T to continue to attempt to charge and/or place holds with respect to all sums described herein, or any portion thereof, to your credit card until such amounts are paid in full. You agree to provide AT&T with updated credit card information upon AT&T's request and any time the information you previously provided is no longer valid. You acknowledge and agree that neither AT&T nor any AT&T affiliated company will have any liability whatsoever for any non-sufficient funds or other charges incurred by you as a result of such attempts to charge, and/or place holds on, your credit card. If you mistakenly provide a debit card number, instead of a credit card number, you authorize all charges described herein to be applied to such debit card unless and until you provide a credit card number. In the event you are enrolled, or later enroll, in an automatic payment or electronic funds transfer plan, you agree that all sums described herein may be charged, at AT&T's option, to the account number provided for such automatic payment or electronic funds transfer plan. When payment is made by credit card or debit card, payment will also be subject to the terms and conditions established by the credit or debit card issuer. If charges cannot be processed through your credit card, or if your bank draft or electronic funds transfer is returned for insufficient funds, we will charge you an additional \$15.00. If the state law where you receive the Service requires a different fee, we will charge you that amount.

**e. Online Billing for AT&T U-verse High Speed Internet Members.** You must register online to establish a personal AT&T My U-verse Account and provide a billing email address. You will then be able to view and pay your bill online by logging on to your personal AT&T My U-verse Account (username and password required).

You understand that you have sole responsibility for the security of your password and you are solely responsible for notifying AT&T if your password is lost or stolen. AT&T is not liable for any claims, costs, damages, or expenses arising from a lost misplaced, or stolen password. If you have forgotten your password or want to change your password for any reason, you may request to reset your password online. It is your responsibility to notify AT&T immediately if your contact information changes.

**f. Late Payment & Failure to Pay.** If you choose to have the charges for your Service added to your telephone bill, and, if AT&T does not receive your payment before the next billing date, you shall pay to AT&T a late payment charge and/or an interest charge of 1.5% (1% in Louisiana), or the highest amount allowed by law, on all charges due and unpaid. Acceptance of late or partial payments (even if marked "Paid in Full") shall not waive any of AT&T rights to collect the full amount due. Notice of any disputes must be in writing and received by us within 30 days after you received your bill or you will waive any objection. **AT&T may suspend or terminate Service if your payment is past due. If AT&T suspends your service for non-payment, you must pay all past due amounts in order to have service restored, and you may also, at AT&T's sole discretion, be required to pay a service restoral fee.** In the event you fail to pay AT&T or AT&T is unable to bill charges to your credit card, AT&T may assign unpaid late balances to a collection agency. In the event legal action is required to recover unpaid amounts, you agree to reimburse AT&T for all expenses incurred to recover sums due, including attorneys fees and other legal expenses.

## **7. Equipment & Software**

Other than the equipment and/or software provided to you by AT&T for use with the Service, you must provide all equipment, devices and software necessary to receive the Service. Any equipment or software that was not provided to you by AT&T is not the responsibility of AT&T, and AT&T will not provide support, or be responsible for ongoing maintenance or management of such equipment. Any AT&T-provided modem or gateway will be either a new or a fully inspected and tested refurbished unit. Regardless of whether the equipment used to access your Service (modem, gateway, etc.) is owned by you or AT&T, AT&T reserves the right to manage such equipment for the duration of your Service, and



retains exclusive rights to data generated by the equipment. Neither you nor a third party may change, interfere with, or block access to equipment data or settings.

AT&T will repair or replace damaged equipment as AT&T deems necessary. You understand that repair or replacement of equipment may delete stored content, reset personal settings or otherwise alter the functionality of your equipment. If the equipment is damaged due to your intentional acts or negligence as determined by AT&T, you will be responsible for the price of repair or replacement.

***a. Additional Equipment Information for AT&T U-verse High Speed Internet Customers.***

AT&T will make available to you certain equipment (including a gateway, or Optical Network Terminal (“ONT”), all of which is herein collectively referred to as “U-verse Equipment”), required for your Service. If you do not purchase U-verse Equipment from AT&T, then you agree to rent the U-verse Equipment, as part of your purchase of the Service and/or other U-verse services. Rental/Purchase options depend on the AT&T U-verse services you order and the installation options you choose.

The U-verse Equipment requires electrical power from your premises to operate, which you are responsible for providing. If there is a gateway at your premises, depending on the other U-verse services you purchase, AT&T may provide an initial gateway battery backup unit and an initial backup battery. If there is an ONT at your premises, AT&T will install an initial power supply box and provide an initial backup battery for the Optical Network Terminal power supply box. You hereby agree to be solely responsible for determining when backup batteries for any U-verse Equipment require replacement and for replacing and recycling used batteries. You agree to read and follow all manufacturer or vendor directions for the replacement and recycling of backup batteries.

Tampering with the U-verse Equipment, or attempting to connect the equipment to other hardware, will be treated as damage due to your intentional acts or negligence. You agree that you will use the equipment only for its intended residential use, and not for any other purpose (such as on another AT&T network, or on another provider’s (non-AT&T) network).

You agree to notify AT&T immediately, in writing or by calling the AT&T customer support line, if the U-verse Equipment is stolen or if you become aware at any time that Services are being stolen or fraudulently used. When you call or write, you must provide a detailed description of the circumstances of the theft, including documentation of theft or fraudulent use of the U-verse Equipment or Services (such as a copy of a police report). You will be responsible for all charges incurred until you report the theft or fraudulent use. You will also be responsible for stolen U-verse Equipment not owned by you, however, AT&T may in its sole discretion waive or reduce charges upon submission of documentation of theft or other circumstances. Failure to provide notice to AT&T of theft in a timely manner may result in the termination of your Services and additional charges to you. Unless notified otherwise by AT&T, after you report the theft or fraudulent use of the Services, you will remain responsible for paying your monthly fees for Services not stolen or fraudulently used.

Upon termination of your Service, for whatever reason, you must return all U-verse Equipment undamaged, within twenty one (21) calendar days to AT&T. If equipment is not returned within twenty one (21) calendar days, or is returned damaged, you will be charged for the value of the U-verse Equipment. We may retain any advance payment or deposit, or portion thereof that previously had not been refunded, if you fail to return the U-verse Equipment within this time period. If all U-verse Equipment is returned within three (3) months of termination, any fees charged for such U-verse Equipment will be refunded (other than fees for damages). No refunds will be made for U-verse Equipment returned after three (3) months from termination.



## **8. Account Security**

You will receive a password associated with your Member ID upon completing the Site/Service registration process. You agree to keep confidential all passwords, IP addresses, and computer names and are solely responsible for any liability or damages resulting from your failure to maintain that confidentiality. You are also solely and fully responsible and liable for all activities that occur under your password, Member ID or IP address. You agree to do all of the following: (a) immediately notify AT&T if you suspect any breach of security such as loss, theft, Public Use or unauthorized disclosure or use of your Member Account or Sub Account, password, Member ID, or any credit or charge card number provided to AT&T or Yahoo! by calling:

1-866-722-3425 for AT&T Dial subscribers,  
1-877-722-3755 for AT&T High Speed Internet subscribers, and  
1-800-ATT-2020 for AT&T U-verse High Speed Internet subscribers  
1-888-321-2375 for FastAccess DSL and BellSouth Dial Internet subscribers.

(b) ensure that you exit from your account at the end of each session; and (c) periodically change your password. There is a risk that other users may attempt to access your computer through the Internet or connected networks. You acknowledge this risk as inherent to the shared nature of the Service and you agree to take full responsibility for taking adequate security precautions and safeguarding your data from loss.

## **9. Yahoo! Premium Services**

Yahoo! also offers certain premium services. You may be prompted to complete the registration process and provide billing and other information before you can use Premium Services. Premium Services are considered part of the Service and are covered by the terms of this Agreement, but may have separate posted guidelines or additional terms that you must follow when using such Premium Services. In addition, certain services offered by Yahoo! are governed by additional agreements. The posted guidelines, additional terms or additional agreements (as applicable) will be provided to you when you use, sign up for or register for those particular services. Unless otherwise expressly noted, the services provided by Yahoo! are consumer services.

Certain Premium Services are included as part of your membership in the Service. These are called "Core Premium Services." Other premium services are available for purchase at an additional cost. These are called "A La Carte Premium Services."

**a. *Termination of Premium Services and Benefits.*** Core Premium Services, any discounts that are provided to Members of the Service on the purchase of certain additional A La Carte Premium Services, or any other benefits provided as part of the Service will terminate upon termination or discontinuance of your membership with the Service. All Core and A La Carte Premium Services, discounts and other benefits provided as part of or in connection with the Service are subject to change at any time without notice. You may cancel a Premium Service at any time by calling Yahoo! Customer Service at (409) 349-5151.

For customers who have a Yahoo! ID that is combined with an account under this Service, any A La Carte Premium Services you may have will remain in effect according to the terms applicable to each of those services after termination of your account. For a period of at least 90 days after the termination of your Service account, you will be asked to close your Member ID when you log in to Yahoo! at any Yahoo! "sign in" opportunity (including, <http://att.yahoo.com>) using your Yahoo! ID or Member ID. If

you do not close your Member ID within such period, we will automatically close your Member ID for you. After your Member ID is closed, you will be able to access your A La Carte Premium Services using your Yahoo! ID.

If you did not combine a Yahoo! ID with an account under this Service, then any A La Carte Premium Services that you purchased under your Member ID will terminate if you fail to transfer them to a new Yahoo! ID within 90 days after termination of your Service account. Unless and until they are terminated, any A La Carte Premium services you may have will remain in effect according to the terms applicable to each of those services. Upon transferring your A La Carte Premium Services to a new Yahoo! ID, you will be able to access these premium services using your new Yahoo! ID. You will be given the option to transfer these premium services to a new Yahoo! ID, when you log in to Yahoo! at any Yahoo! “sign in” opportunity (including, <http://att.yahoo.com>) using your Member ID within the transfer period. If you do not transfer these premium services to a new Yahoo! ID, we will terminate these premium services and you may lose some associated data that is stored in connection with such premium services, such as e-mails, photos, or briefcase data that are attributable to premium services that offer extra storage in the Yahoo! Mail, Yahoo! Photos, and Yahoo! Briefcase properties. Your Member ID will close when you transfer your A La Carte Premium Services or, if you fail to transfer them, at the end of the transfer period.

**Note:** Sub-Accounts with a combined Yahoo! ID will keep their A La Carte Premium Services under their Yahoo! ID when the Member ID of the member Account holder is closed. Sub-Accounts with no combined Yahoo! ID will not have an opportunity to transfer their A La Carte Premium Services and associated data, Sub-Account holders should make the election following the process above before the Member ID of the Member Account is closed.

## **10. Restrictions on Use**

Your use of the Site & Service is subject to the AT&T Acceptable Use Policy (“AUP”) (which may be viewed at <http://support.sbcglobal.net/legal/aup>). Violations of the AUP may result in suspension or termination of your Member Account or the Service by AT&T and/or Yahoo!.

a. **No Resale.** The Service is provided for your use only (unless otherwise specifically stated) and you agree not to reproduce, duplicate, copy, sell, transfer, trade, resell or exploit for any commercial purposes your membership in the Service, any portion of the Service, use of the Service, or access to the Service, including, but not limited to, reselling capabilities enabled or used by a specific application (including, without limitation, Voice Over Internet Protocol (VOIP)). All aspects of the Service and Site, except that portion provided by third party providers, is copyrighted and property of AT&T and/or Yahoo! as applicable. You agree that the Service is not to be used to trunk or facilitate public internet access (“Hotspots”) or any other public use of the Service.

b. **Copyright Infringement & Digital Millennium Copyright Act.** You are prohibited from infringing, publishing, submitting, copying, uploading, downloading, posting, transmitting, reproducing, or distributing software, video or audio content, or any other material that is protected by copyright, trademark, patent, trade secret, any other type of intellectual property rights, trademark laws (by rights of privacy or publicity) or other proprietary right of any party unless you own or control the rights thereto or have received all necessary consent to do the same. This prohibition includes the use of any material or information including images or photographs that are made available through the Site or Service(s). **AT&T and Yahoo! assume no responsibility, and you assume all risks, regarding the determination of whether material is in the public domain, or may otherwise be used by you for such purposes.**

AT&T respects the intellectual property rights of others. If you believe that your work has been copied and has been posted, stored or transmitted to the Site in a way that constitutes copyright infringement, please submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing AT&T's Copyright Agent the following written information: (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (b) a description of the copyrighted work that you claim has been infringed upon; (c) a specific description of where the material that you claim is infringing is located on the Site; (d) your address, telephone number, and e-mail address; (e) a statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; (f) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

AT&T's Copyright Agent for notice of claims of copyright infringement on the Site can be reached as follows:

Manager of Security & Copyright Infringement 1800 Perimeter Park Drive, Suite 100 Morrisville, NC 27560 Phone: (919) 319-5737 Fax: (919) 319-8154 E-mail: [copyright@att.com](mailto:copyright@att.com)

For more information about AT&T's copyright protection practices under the DMCA and for information on how to contact AT&T's DMCA agent, please refer to [www.att.net/legal/copyright](http://www.att.net/legal/copyright).

**c. *Use by Children.*** AT&T is concerned about the safety and privacy of all its users, particularly children. For this reason, children under the age of 13 will not be permitted to access the Site or Service unless added as a Sub Account by a Member Account holder who is their legal guardian. You understand that by adding a child to your Member Account, you are giving your child access to features that are available as part of the Site or Service (including email, message boards, clubs, and instant messages) and the Internet. Please remember that the Service is designed to appeal to a broad audience. It is your responsibility to determine whether the features provided through the Site and Service are appropriate for a minor.

AT&T suggests that you take advantage of the access controls offered with the Service, which allow you, as the Member Account holder, to block access to certain types of web content you may feel are inappropriate for minors. However, AT&T also recommends that you remain diligent in the supervision of any minors in their use of the Service and the Internet. Access controls provided through the Service are intended as a guide only. Neither AT&T nor Yahoo! nor their licensors can be responsible for any content accessed by you or minors, whether or not you take advantage of the access controls provided through the Service. In addition, neither AT&T nor Yahoo! nor their licensors guarantee the accuracy of such access controls, and you agree that you will not hold AT&T or Yahoo! liable for any loss or damage of any kind incurred as a result of the use of such access controls.

## **11. Data Management, Content & Links**

**a. *Data Management.*** You are responsible for management of your information including but not limited to back-up and restoration of data, erasing data from disk space you control and changing data on or settings for your modem and/or router. AT&T is not responsible for the loss of your data or for the back-up or restoration of your data regardless of whether this data is maintained on our servers or your computer server.

**b. Content.** You, and not AT&T or Yahoo!, are entirely responsible for all content that you upload, download, post, email, transmit or otherwise make available via the Site and Service (“Content”). AT&T and Yahoo! do not generally pre-screen or control Content that is posted by users of the Site, and, therefore, do not guarantee the accuracy, integrity or quality of such Content. AT&T and Yahoo! shall have the right (but not the obligation) in its sole discretion to pre-screen, refuse or remove any Content that is available via our Site that is illegal, violates these Terms or the AUP, or exposes AT&T or Yahoo! to any risk of claims, lawsuits or liability. As the providers of the Service, we are only a forum and are not liable for any statements, representations, or Content provided by Site users. Any opinions, advice or recommendations expressed therein are those of the users providing such Content and not those of AT&T or Yahoo!. We do not endorse any Content or any opinion, recommendation or advice expressed therein.

AT&T and Yahoo! may preserve Content and may also disclose Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce this Agreement; (c) respond to claims that any Content violates the rights of third-parties; or (d) protect the rights, property, or personal safety of AT&T, Yahoo!, other end users and the public.

**c. Grant of License.** AT&T and Yahoo! do not claim ownership of Content you submit or make available for inclusion on the Site or Service. However, with respect to Content you submit or make available for inclusion on publicly accessible areas of the Site, you grant AT&T and Yahoo! the following world-wide, royalty free and non-exclusive license(s) as applicable:

- (i) With respect to Content you submit or make available for inclusion on publicly accessible areas of Yahoo! Groups, you grant AT&T and Yahoo! the license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Site solely for the purposes of providing and promoting the specific Yahoo! Group to which such Content was submitted or made available. This license exists only for as long as you elect to continue to include such Content on the Site and will terminate at the time you remove or Yahoo! removes such Content from the Site.
- (ii) With respect to photos, graphics, audio or video you submit or make available for inclusion on any publicly accessible area of the Site other than Yahoo! Groups, you grant AT&T and Yahoo! the license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Site solely for the purpose for which such Content was submitted or made available. This license exists only for as long as you elect to continue to include such Content on the Site and will terminate at the time you remove or Yahoo! removes such Content from the Site .
- (iii) With respect to Content other than photos, graphics, audio or video you submit or make available for inclusion on publicly accessible areas of the Site other than Yahoo! Groups, you grant AT&T and Yahoo! the perpetual, irrevocable and fully sub-licensable license to use, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display such Content (in whole or in part) and to incorporate such Content into other works in any format or medium now known or later developed.

**d. Links.** The Site may include links to other web sites or resources. These links are to websites which AT&T and Yahoo! do not control. AT&T and Yahoo! are not, therefore, responsible and will not be liable for the availability, content, advertising, products or other materials available on such websites or any damage alleged to have been caused by or in connection with the use of content available on such websites.

**e. *Third Party Content.*** Content contained in sponsor advertisements or information presented to you through the Site or advertisers is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly authorized by AT&T, Yahoo! or advertisers you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Site, Service or the Software in whole or in part.

## **12. Privacy Policies**

Registration data and certain other information about you are subject to the respective privacy policies of AT&T and Yahoo!. For more information see: <http://att.yahoo.com/privacy>.

## **13. DISPUTE RESOLUTION WITH AT&T BY BINDING ARBITRATION**

**PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.**

Most customer concerns can be resolved quickly and to the customer's satisfaction by calling AT&T at 1-800-288-2020. In the unlikely event that AT&T's business office is unable to resolve a complaint you may have to your satisfaction (or if AT&T has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted. AT&T will pay all costs of arbitration, no matter who wins, so long as your claim is not frivolous. Moreover, in arbitration you are entitled to recover attorneys' fees from AT&T to at least the same extent as you would be in court. In addition, under certain circumstances (as explained below), AT&T will pay you and your attorney a special premium if the arbitrator awards you an amount that is greater than what AT&T has offered you to settle the dispute.

### ***Arbitration Agreement:***

a. AT&T and you agree to arbitrate all disputes and claims between you and AT&T which are Arbitration Claims. "Arbitration Claims" as used in this Agreement means claims against AT&T based in whole or in part upon the Service(s), and does not include claims against Yahoo, or claims against AT&T or Yahoo that are based in whole or in part on the Site. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to Arbitration Claims which:

- are based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
- arose before this or any prior Agreement (including, but not limited to, claims relating to advertising);
- are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- may arise after the termination of this Agreement.

Notwithstanding the foregoing, either party may bring an individual action in small claims court. **YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND AT&T ARE EACH**



**WAIVING THE RIGHT TO A TRIAL BY JURY AND TO PARTICIPATE IN A CLASS ACTION WITH RESPECT TO ARBITRATION CLAIMS.** This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

b. A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute (“Notice”). The Notice to AT&T should be addressed to: AT&T Internet Services - Legal Department, 208 S. Akard, Room 3100.04, Dallas, Texas 75202 (“Notice Address”). The Notice must (1) describe the nature and basis of the claim or dispute; and (2) set forth the specific relief sought (“Demand”). If AT&T and you do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, you or AT&T may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by AT&T or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or AT&T is entitled.

**You may download or copy a form Notice and a form to initiate arbitration from here: [www.att.com/residentialarbitration](http://www.att.com/residentialarbitration).**

c. After AT&T receives notice at the Notice Address that you have commenced arbitration, it will promptly reimburse you for your payment of the filing fee. (The filing fee currently is \$125 for claims under \$10,000, but is subject to change by the arbitration provider. If you are unable to pay this fee, AT&T will pay it directly upon receiving a written request at the Notice Address.) The arbitration will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”) of the American Arbitration Association (“AAA”), as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. All issues, including the scope of this arbitration provision, are for the arbitrator to decide, except that issues relating to the enforceability of the arbitration provision are for the court to decide, but the arbitrator is bound by the terms of this Agreement. In no event shall the arbitrator have the authority to (a) make any award that is in excess of or contrary to what this Agreement provides, or (b) order consolidation or arbitration on a class wide or representative basis. Unless AT&T and you agree otherwise, any arbitration hearings will take place in the county (or parish) of your billing address. If your claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Except as otherwise provided for herein, AT&T will pay all AAA filing, administration and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse AT&T for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules.

d. If, after finding in your favor in any respect on the merits of your claim, the arbitrator issues you an award that is:

- equal to or less than the greater of (1) \$5,000 or (2) the maximum claim that may be brought in small claims court in the county of your billing address; and
- greater than the value AT&T’s last written settlement offer made before an arbitrator was selected,

then AT&T will:

- pay you the greater of (1) \$5,000 or (2) the maximum claim that may be brought in small claims court in the county of your billing address (“the premium”) instead of the arbitrator’s award; and
- pay your attorney, if any, twice the amount of attorneys’ fees, and reimburse any expenses, that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration (“the attorney premium”).

If AT&T did not make a written offer to settle the dispute before an arbitrator was selected, you and your attorney will be entitled to receive the premium and the attorney premium, respectively, if the arbitrator awards you any relief on the merits. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the premium and the attorney premium at any time during the proceeding and upon request from either party made within fourteen (14) days of the arbitrator’s ruling on the merits.

e. The right to attorneys’ fees and expenses discussed in paragraph (d) supplements any right to attorneys’ fees and expenses you may have under applicable law. Thus, if you would be entitled to a larger amount under the applicable law, this provision does not preclude the arbitrator from awarding you that amount. However, you may not recover duplicative awards of attorneys’ fees or costs. Although under some laws AT&T may have a right to an award of attorneys’ fees and expenses if it prevails in an arbitration, AT&T agrees that it will not seek such an award.

f. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual claim. YOU AND AT&T AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and AT&T agree otherwise, the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific proviso is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

g. Notwithstanding any provision in this Agreement to the contrary, we agree that if AT&T makes any change to this arbitration provision (other than a change to the Notice Address) during the period of time that you are receiving Services, you may reject any such change by sending us written notice within 30 days of the change to the Arbitration Notice Address provided above. By rejecting any such change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision..

#### 14. **Dispute Resolution with Yahoo**

The relationship between users of the Site and Yahoo! shall be governed by the laws of the State of California without regard to its conflict of law provisions. You and Yahoo! agree, for disputes against Yahoo, to submit to the personal and exclusive jurisdiction of the courts located within the county of Santa Clara, California.

#### 15. **Software – End User License Agreement**

If you have connected to the Service by downloading or installing AT&T’s and/or Yahoo!’s Internet software (“Software”), your use of that Software is subject to the End User License Agreement that accompanied that Software. Otherwise, AT&T, Yahoo! or its applicable third party licensors, grants



you a personal, non-exclusive right and license to use the object code of any software provided to you in conjunction with the Service on a single computer; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software. You agree not to modify the Software in any manner or form, nor to use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the Service. You agree not to access the Service by any means other than through the interface that is provided by AT&T and Yahoo! for use in accessing the Service. The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraphs (a) through (d) of the Commercial Computer Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause of DFARS and in similar clauses in the NASA FAR Supplement.

AT&T, Yahoo!, or applicable third party licensors may provide Software upgrades, updates or supplements (such as, but not limited to, adding or removing features or updating security components). You understand that whether the equipment is owned by you or AT&T, AT&T, Yahoo!, or the applicable third party licensor, has the unrestricted right, but not the obligation, to upgrade, update, or supplement the Software on your equipment at any time.

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#### 16. **Operational Limits/Force Majeure**

Provisioning of the Service is subject to the availability and the operational limitations of the requisite equipment and associated facilities. You understand and agree that temporary interruptions of the Service may occur as normal events in the provision of the Service and that AT&T and Yahoo! are not liable for such interruptions. You further understand and agree that AT&T and Yahoo! have no control over third party networks you may access in the course of your use of the Service, and therefore, delays and disruptions of other network transmissions are beyond the control of AT&T and Yahoo!. In addition, AT&T and Yahoo! are not liable for any failure of performance due to any cause beyond their reasonable control including acts of God, fire, explosion, vandalism, terrorism, cable cut, major weather disturbance, national emergencies, riots, wars, labor difficulties, supplier failures, shortages, breaches, any law, order, regulation, direction, action, or request by any government, civil or military authority, or suspension of existing service in compliance with state and/or federal law, rules and regulations, or delays caused by you or your equipment.

#### 17. **Support + Customer Service**

AT&T provides free basic customer care for Service purchased from AT&T and covered under this Agreement. However, Customers in some areas are also be eligible for Support +, a fee-based option for customer service and trouble-shooting associated with issues unrelated to the Service (e.g. help setting up your computer or troubleshooting problems with certain operating systems). Should you choose to purchase or subscribe to AT&T's Support + service, you agree to be bound by the Terms & Conditions located at: [www.att.com/supportplus](http://www.att.com/supportplus). AT&T reserves the right to change these Terms & Conditions

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You acknowledge that you are responsible for all use of the Site and Service using your account, including use by Sub Accounts, and that this Agreement, the Acceptable Use Policy and Privacy Policies, as amended from time to time, apply to any and all usage of your account, including use by Sub Accounts. You agree to abide by these terms and you agree to defend, hold harmless and indemnify AT&T and Yahoo! from and against any and all claims stemming from usage of this account and any Sub-Account-whether or not such usage is expressly authorized by you.

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